



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD; FF

### **Introduction**

This is the Tenants' application for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Tenants gave affirmed testimony at the Hearing.

The Tenants stated that the Notice of Hearing documents and copies of their documentary evidence were mailed to the Landlord, via registered mail, on August 16, 2012. The Tenants provided the registered mail receipt and tracking number in evidence. The Tenants stated that they mailed the documents to the Landlord at his address for business, which is also the address that was provided on the bottom of a money order for the partial return of their security deposit. The Tenants testified that the registered documents were returned to them "unclaimed". The Tenants provided a copy of the money order in evidence.

Based on the Tenants' affirmed testimony and the documentary evidence provided, I am satisfied that the Tenants served the Landlord pursuant to the provisions of Section 89(1)(c) of the Act.

This application was scheduled to be heard via teleconference on October 25, 2012, at 11:00 a.m. Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

**Commencement of Hearing** The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The Hearing continued in the absence of the Landlord and a decision was reached.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

This tenancy began on December 1, 2011 and ended on July 1, 2012. Monthly rent was \$1,200.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 at the beginning of the tenancy. Contrary to the provisions of Section 13 of the Act, the Landlord did not prepare a tenancy agreement in writing.

Contrary to the provisions of Sections 23 and 35 of the Act, the Landlord did not prepare a Condition Inspection Report that complies with the requirements of Section 20 of the regulations at the beginning or the end of the tenancy.

The Tenants testified that they gave the Landlord the female Tenant's mother's address as a forwarding address on July 1, 2012, but that they did not provide it to the Landlord in writing.

The Tenants stated that the Landlord returned \$228.46 of their security deposit, by money order, on July 23, 2012. They testified that the Landlord kept \$371.54 of the security deposit for damages that they do not agree were their responsibility. The Tenants stated that they did not agree that the Landlord could retain any of the security deposit.

The Tenants stated that they have not yet cashed the money order.

The Landlord has not filed an application for dispute resolution with respect to the security deposit.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenants, to be applied in accordance with the provisions of the Act. In other words, a landlord cannot arbitrarily decide to retain any or all of the security deposit at the end of a tenancy.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address **in writing**, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. However, in this case, the Tenants testified that they did not provide the Landlord their forwarding address in writing.

Therefore, I find that the Tenants are not entitled to a monetary order for double the security deposit, but that they are entitled to return of the total amount of the security deposit. I advised the Tenants to cash the money order which represented partial return of their security deposit. I find that the Tenants are entitled to return of the balance of the security deposit in the amount of **\$371.54**.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

I hereby provide the Tenants a Monetary Order in the amount of **\$421.54** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 13, 2012.

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Residential Tenancy Branch