



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This is an application under the *Residential Tenancy Act* (the “Act”) by the tenant for a monetary order for return of double the security deposit, and to recover the filing fee.

The tenant attended the hearing. The tenant gave affirmed testimony, was provided the opportunity to present his evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlords did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The tenant testified that he served the landlords with the Notice and evidence on August 29, 2012 at approximately 5:00 p.m. via registered mail. The tenant confirmed that the registered mail was addressed to both landlords at the address provided by the landlords in earlier correspondence. The tenant confirmed that one of the landlords signed for their registered mail package, while the other landlord did not.

Based on the undisputed testimony of the tenant and the fact that the landlords did submit evidence in response to the tenant’s application, which will be discussed in Preliminary and Procedural Matters below, I find the landlords were served in accordance with the *Act*.

### Preliminary and Procedural Matters

The landlords submitted evidence for the purposes of this hearing. The tenant confirmed receipt of the 19 pages of evidence and confirmed that he had the opportunity to review the evidence from the landlords prior to the hearing. Accordingly, the evidence from the landlords was accepted and reviewed during the hearing.

In their evidence, the landlords write “We will be away when this hearing is heard.” The landlords do not request an adjournment, nor do they indicate that an agent would be attending the hearing. The only person to call into the hearing was the applicant tenant. The landlords also submitted in their evidence, a copy of their plane ticket, which I

assume was to support their position that they would be away during the hearing. According to the plane ticket, the landlords were in California and due to board a flight from BC to California at 7:55 p.m. and scheduled to arrive in BC at 10:08 p.m. The hearing began at 1:30 p.m. I find the landlords were available to call into the teleconference hearing from California via the toll-free number provided on the Notice, however, chose not to do so. I find that the landlords decided not to have an agent represent them during the teleconference hearing. Therefore, the hearing continued with the application of the tenant, the tenant's documentary evidence, and the landlords' documentary evidence.

The tenant provided a written letter signed by the co-tenant, S.M., confirming that the applicant was also representing the co-tenant, S.M., in this application. As a result, I have amended the applicant tenant's application to include both co-tenants.

#### Issue to be Decided

- Are the tenants entitled to the return of double the security deposit pursuant to section 38 of the *Act*?

#### Background and Evidence

A fixed term tenancy began on October 6, 2011 and was to expire on October 1, 2012. Rent in the amount of \$1,300.00 was due on the first of each month. A security deposit of \$650.00 was paid at the start of the tenancy.

A copy of the written tenancy agreement which names both tenants was submitted as evidence by the landlords. The landlords submitted in their evidence, that the applicant tenant, V.T., did not sign the tenancy agreement. The tenant disputed the landlords' evidence, by stating that he thought he signed, but was not provided a copy of the agreement after he signed it. The tenant provided additional evidence that he was a tenant by stating he paid the monthly rent by direct deposit to the landlords' bank account as they used the same bank. The co-tenant, S.M., repaid his co-tenant in cash each month.

The tenants vacated the rental unit on April 30, 2012 by a verbal mutual agreement with the landlords. The new tenants moved in on or about May 1, 2012.

The tenant, V.T., met with the male landlord on April 30, 2012 and signed a "move out report" that was submitted by both parties as evidence. In the move out report dated April 30, 2012 it states:

"April 30/12 Move out report.

New tenant cleaned		1 hour – cleaned floors/
Dirty stove	>	walls/sills/ baseboards.
Windows not clean		2 hours

Not moved out until 4pm.

Landlord cleaned suite	2 hours – bathroom, kitchen cupboards
	Most of stove –
	Fridge, kitchen counter
	Washer/dryer"

[reproduced as written]

At the bottom of this document, the tenant and a landlord have signed. There is no monetary amount listed on the document. The tenant stated that there was no agreement made with the landlords regarding deductions to be made from the security deposit. The tenant stated that he only signed the document as he thought he was required to, to end their tenancy.

In a subsequent document dated May 7, 2012, the landlords describe a hydro bill owed in the amount of \$166.69, 5 hours of cleaning at \$25.00 per hour, for a total of \$125.00, and a glass railing valued at \$75.00, for a total owing of \$366.69. This resulted in security deposit refund of \$283.31. The tenant stated that this document was not presented at the time he signed the move out report on April 30, 2012. The tenant testified that he did not agree to any deductions from the security deposit.

Tenant V.T. received a cheque from the landlords in the amount of \$283.31 dated May 8, 2012. The tenant returned the cheque to the landlords with a letter dated May 10, 2012 which stated:

"...The letter & cheque that I received today does not represent any agreement that we have made. With that, I am returning the cheque. Please send your return to this address...."

[reproduced as written]

At the bottom of this letter tenant, V.T. supplied his forwarding address in writing. The landlords confirmed receiving this letter by referring to it in their evidence package.

The tenant stated that the landlords then mailed his co-tenant S. M. a cheque for the same amount, \$283.31, which was not cashed by co-tenant S.M., and was mailed to co-

tenant V.T. in September as evidence for this hearing. The tenant stated that he intends on returning the cheque made out to co-tenant S.M. which was dated May 10, 2012 to the landlords after the hearing.

The tenant stated that the landlords have not filed to claim against the security deposit and are seeking return of double their security deposit, plus the cost of filing this application.

### Analysis

Based on the documentary evidence of both parties, the undisputed oral testimony of the tenant, and on a balance of probabilities, I find the following.

I find the tenant who attended the hearing is representing both tenants in this application and have amended the application to reflect both co-tenants as a result. I accept that both tenants were co-tenants as they were both listed on the tenancy agreement submitted as evidence. In addition, tenant V.T. was paying the monthly rent to the landlords by direct deposit, and signed the move out report with one of the landlords.

The tenant confirmed that he provided his written forwarding address to the landlords on May 10, 2012. Section 38 of the *Act* states:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days** after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application** for dispute resolution claiming against the security deposit or pet damage deposit.

(4) A landlord may retain **an amount** from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord **does not comply** with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

[emphasis added]

Based on the undisputed testimony of the tenant, **I find** that the tenant provided his forwarding address in writing to the landlords on or about May 10, 2012. I accept the tenant's undisputed testimony which is supported by the evidence submitted by both parties, that the move out report did not contain an amount owing for the items listed. I also accept that the document dated May 7, 2012 which did specify amounts owing, was created by the landlords after the move out report was signed by the tenant and the landlord on April 30, 2012.

Based on the above, **I find** the landlords failed to include an amount on the move-out report submitted as evidence. **I find** the landlords failed to repay the full security deposit or make an application within 15 days of receiving the forwarding address which was dated May 10, 2012. The landlords have not filed an application claiming towards the security deposit. **I find** the landlords had no authority to retain any portion of the security deposit. Therefore, **I find** the tenants are entitled to double the original security deposit of \$650.00 which has not accrued interest to date for a total owing by the landlord of **\$1,300.00**.

**I caution** the landlords that a security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from a Dispute Resolution Officer, or the written agreement of the tenants which must specify **an amount**. In the matter before me, the landlords did not have any authority under the *Act* to keep any portion of the security deposit.

As the tenants were successful with their application, **I grant** the tenants the recovery of the cost of filing this application in the amount of **\$50.00**.

**I find** that the cheque held made out to tenant S.M. and held by co-tenant V.T. dated May 10, 2012 is now stale-dated.

**I grant** the tenants a monetary order pursuant to section 67 of the *Act*, in the total amount of **\$1,350.00** comprised of double the original security deposit and the filing fee. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I find the tenants are entitled to the return of double the original security deposit and recovery of the filing fee. I grant the tenant a monetary order in the amount of \$1,350.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 09, 2012

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Residential Tenancy Branch