



# 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 tenants for a monetary order for return of double the security deposit, and to recover the filing fee.

The male tenant and the male landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The landlord confirmed that he received the evidence package of the tenants prior to the hearing and had the opportunity to review the evidence which contained the tenancy agreement, addendum to the tenancy agreement, a copy of the cheque from the landlord, and the envelope it was mailed in.

### 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 September 1, 2010 and ended by mutual agreement of the parties on June 1, 2012. A security deposit of \$600.00 was paid by the tenants at the start of the tenancy, which both parties acknowledge exceeded one half month's rent which is not in keeping with the *Act*.

The tenant testified that he provided their written forwarding address on a piece of paper and provided it to the male landlord at a move-out inspection on May 27, 2012. The landlord disputed the testimony of the tenant by stating that he did not receive anything in writing from the tenants with their forwarding address. The tenant did not have any witnesses, statements from witnesses, a copy of the written forwarding address or other documents to corroborate his testimony.

The tenant also stated that he sent an e-mail with their forwarding address on May 24, 2012 and a subsequent reminder e-mail on June 26, 2012. The tenants did not submit copies of the e-mails as evidence.

The parties agree that the landlord mailed a cheque for return of the security deposit in the amount of \$600.00 dated July 10, 2012. The tenants testified that they received the cheque July 23, 2012. The parties were unsure of the post-marked date on the envelope which was submitted as evidence. Parties thought the date could be July 10 or July 13. The landlord could not recall the date he mailed the cheque to the tenants.

The male tenant confirmed that he cashed the \$600.00 cheque, however, is seeking an additional \$600.00 and their filing fee of \$50.00 as the landlord failed to return their security deposit within 15 days of receiving their written forwarding address on May 27, 2012 after the walk through inspection with the male landlord.

### Analysis

Based on the above and the evidence provided, and on a balance of probabilities, I find the following.

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.

[emphasis added]

The tenant testified that he provided their written forwarding address on May 27, 2012 to the male landlord, which the male landlord disputes. The tenants did not provide further evidence to corroborate their testimony.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Although e-mail is not an approved form of service under the *Act*, it can be considered where evidence supports that the parties have communicated by e-mail on a regular basis. The landlord did confirm during the hearing that he received an e-mail from the female tenant on June 26, 2012 reminding him about the return of their security deposit. The landlord mailed a cheque dated July 10, 2012, however, the post-marked date on the envelope submitted as evidence was difficult to read.

On the balance of probabilities and after careful examination of the post-marked envelope, **I find** that the post-marked date more likely than not reads "12 07 10", which is July 10, 2012. This would also be consistent with the date on the cheque written by the landlord which was July 10, 2012. Therefore, **I find** that the landlord returned the cheque to the tenants within 15 days of receiving their forwarding address in the June 26, 2012 e-mail. The date the tenants received the cheque is not applicable to the 15 day calculation. Therefore, **I find** the tenants have failed to prove that the landlord breached section 38 of the *Act*.

**I caution** the landlords that section 19 of the *Act* states that a landlord must not require or accept a security deposit that is greater than the equivalent of  $\frac{1}{2}$  of one month's rent payable under the tenancy agreement. The parties agree that the original security deposit was \$600.00 when the maximum security deposit should have been \$587.50. The parties also agree that the full security deposit has been returned in the amount of \$600.00.

As the tenants' application did not have merit, **I do not** grant the tenants the recovery of the filing fee.

### Conclusion

I dismiss the tenants' application in full without leave to reapply.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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 27, 2012

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Residential Tenancy Branch