



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### 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.

The tenant, the landlord, an agent for the landlord (the “agent”), and a witness for the landlord (the “witness”) 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 parties confirmed that they both had a copy of the condition inspection report which was referred to during the hearing. The tenant testified that she did not serve the landlord with a page of her evidence which contained a copy of the post-marked envelope that the landlord returned her security deposit cheque in. As a result of the landlord not being served in accordance with the rules of procedure, that page of the tenant’s evidence was excluded. The tenant was permitted to refer to that evidence through her oral testimony as an alternative.

### Preliminary Matter

At the start of the hearing, the landlord asked if I, the Arbitrator, had a sibling. I confirmed I did, and immediately asked the tenant if she had any concerns with me hearing the dispute. The tenant asked if I knew the landlord personally, which I confirmed I did not. I explained to the parties that as an impartial Arbitrator I remain unbiased, and make a final and binding decision in accordance with the *Act*. The tenant confirmed that she had no concerns and could proceed with the hearing.

### Issue to be Decided

- Is the tenant 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 February 17, 2012 and ended on August 31, 2012 when the tenant vacated the rental unit. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy.

On August 31, 2012, the parties completed a move-out condition inspection together. The parties agree that the tenant provided her forwarding address in writing on the move-out condition inspection report on August 31, 2012. The agent stated that the tenant was entitled to the full return of her security deposit after the tenancy ended.

The tenant testified that she did not receive a cheque from the landlord for the full security deposit of \$500.00 until September 21, 2012. The tenant testified that the envelope that the cheque was mailed in was post-marked on September 17, 2012.

The landlord testified that they mailed the cheque to the tenant on September 7, 2012. The witness for the landlord, who was also the spouse of the landlord, testified that she personally witnessed the envelope containing the security deposit cheque for the tenant be deposited into a mailbox before a hair appointment on September 7, 2012. The landlord stated that the pickup time indicated on the mailbox stated 1:00 p.m. or 2:00 p.m., and that he mailed the cheque at approximately 10:30 a.m. on September 7, 2012 in Edmonton, Alberta when they were out of the province. The parties agree that the date on the cheque was September 5, 2012.

The tenant testified that she called the agent on September 14, 2012 and that the agent stated that the cheque had not been signed or mailed as of September 14, 2012. The agent disputed the testimony of the tenant. The agent testified that he did not say that to the tenant, however, did state that the cheque was mailed on September 7, 2012 and if the tenant would prefer, she could provide her banking information, and he would send the money electronically to her bank if she would tear up the cheque when it arrived. The tenant confirmed that she did not want to provide her banking information to the agent.

The tenant was asked if she had any witnesses, witness statements or other corroborating evidence in support of her claim. The tenant provided oral testimony regarding a post-marked envelope that the cheque arrived in which was stamped on September 17, 2012. The landlord stated that he had called the postal service and was informed that mail from Edmonton, Alberta to Vancouver Island takes 3-4 days on average. The landlord stated that he had no idea what caused the delay as a result of the information he received by phone from the postal service. The landlord stated that

the mail should have been picked up on September 7, 2012 based on the pickup time displayed on the mailbox.

The tenant stated that she believes that the *Act* requires that the landlord return her payment to her within 15 days or the landlord has to pay double the security deposit. The tenant is seeking a monetary order of \$500.00 as a result of receiving her security deposit back 21 days after the tenancy ended and her forwarding address was provided in writing.

The landlord apologized to the tenant that she did not receive her security deposit back sooner; however, the delay was on the part of the postal service, and not on his part.

### Analysis

Based on the oral testimony, documentary evidence, 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.

**(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.**

[emphasis added]

The parties agree that the tenant provided her forwarding address to the landlord in writing on August 31, 2012 during the move-out condition inspection.

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.

The tenant provided oral testimony that the envelope was post-marked on September 17, 2012, and was received on September 21, 2012. The date of the cheque was September 5, 2012.

The landlord, agent and witness for the landlord testified that the cheque was mailed on September 7, 2012 and did not arrive soon due to a postal service delay that was out of their control.

In the matter before me, the tenant has the onus to prove their claim that the landlord breached section 38 of the *Act*. If I accept the oral testimony of the tenant that the envelope was post-marked on September 17, 2012, this would result in a delay of 10 days between the date the landlord states he placed the envelope in the mailbox and that date it was post-marked by the postal service. **I find** that it is not unreasonable that a delay in the postal service could result in the mail being post-marked 10 days after it was mailed.

The *Act* does not require that the payment be received by the tenant within 15 days. The landlord has 15 days to place the security deposit into the mail, which section 88 (c) of the *Act* states can be via ordinary mail to the address at which the person resides.

Based on the disputed testimony of the parties, and without any other evidence in support of the tenant's claim, **I find** the tenant has failed to prove that the landlord breached section 38 of the *Act* by mailing the cheque 15 days after August 31, 2012.

Given the above, **I find** the tenant is not entitled to the return of double her security deposit. **I dismiss** the tenant's application in full due to insufficient evidence, without leave to reapply.

### Conclusion

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

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: December 06, 2012

---

Residential Tenancy Branch