



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD and FF

### Introduction

This hearing was convened on the tenant's application of September 17, 2012 seeking a Monetary Order for return of his security deposit on the grounds that the landlord had not returned it within 15 days of the latter of the end of the tenancy or receipt of the tenants' forwarding address. The tenant also sought to recover the filing fee for this proceeding from the landlord.

Despite having been sent the Notice of Hearing by registered mail on September 18, 2012, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. As the landlord had been served as required by section 89(1)(c) of the *Act*, the hearing proceeded in his absence.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of the security deposit and should the amount be doubled as required by section 38(6) of the *Act*.

### Background and Evidence

This tenancy began on June 15, 2012 and ended on August 31, 2012. Rent was \$750 per month and the landlord holds a security deposit of \$375 paid on June 3, 2012. As verification of payment, the tenant submitted a copy of his cheque of June 3, 2012 for \$750, with the memo notation that it covered the damage deposit and, according to the tenant, the balance was for the rent from June 15, 2012 to June 30, 2012.

During the hearing, the tenant submitted a copy of an email dated September 13, 2012 to the named landlord's wife, a co-owner of the rental unit, in which she acknowledges receipt of the tenant's forwarding address and states that she had forwarded it to her co-owner.

The tenant stated that he had spoken with the named landlord by telephone on September 15, 2012, had advised him of the 15-day requirement of section 38(1) of the *Act*, requested return of the deposit. He said the landlord told him he would not return the deposit.

### Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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 deposits.

In the present matter, in the absence any evidence to the contrary, I must find that the landlord breached section 38(1) of the *Act* by retaining the security deposit without the tenant's consent or having made application to claim against it.

Therefore, I find that the tenant is entitled to a Monetary Order for return of the security deposit in double and, as the application has succeeded, to recover the filing fee for this proceeding from the landlord, calculated as follows:

To return security deposit (no interest due)	\$375.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$800.00</b>

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$800.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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: December 06, 2012.

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Residential Tenancy Branch