



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of her security deposit and for recovery of the filing fee.

The tenant appeared; the landlords did not appear.

The tenant gave evidence that she served each landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on September 25, 2012. The tenant supplied the receipts and tracking number of the registered mail.

I find the landlords were served in a manner complying with section 89 of the Residential Tenancy Act and the hearing proceeded in the landlords' absence.

The tenant was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order comprised of her security deposit, doubled, and to recover the filing fee?

### Background and Evidence

The tenant's monetary claim is \$1000.00, which is comprised of her security deposit of \$500.00, doubled.

The tenant supplied evidence of a Decision from previous dispute resolution hearing, which was convened for the landlords' application seeking monetary compensation.

In that Decision, dated August 29, 2012, the arbitrator dismissed the landlords' application and ordered that the landlords return the tenant's security deposit of \$500.00 before September 20, 2012.

The tenant said that despite this order, the landlord failed to return the tenant's security deposit prior to filing her application for dispute resolution. Since the filing of her application, the tenant said that the landlords have sent a cheque for \$320.00, with a copy of an old utility bill for \$180.00.

### Analysis

Based upon the relevant evidence and a balance of probabilities, I find as follows:

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, however, the issue of the tenant's security deposit has previously decided, that being in the Decision dated August 29, 2012.

As this issue has previously been decided in that Decision, I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata* and as such I am not able to order that the landlords pay the tenant double her security deposit.

The arbitrator ordered that the tenant's security deposit be returned, but did not provide a monetary order. I find that the tenant is entitled to such a monetary order.

I allow the tenant recovery of her filing fee of \$50.00.

I therefore find that the tenant is entitled to a monetary order in the amount of \$230.00, comprised of her security deposit of \$500.00, less \$320.00 previously paid by the landlords, and the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$230.00, which I have enclosed with the tenant's Decision.

In the event the tenant has not cashed the cheque of \$320.00 received from the landlord, the amount of the monetary order is accordingly increased by that amount. The tenant is also at liberty to seek a modified monetary order for the increased amount should the original order not be enforceable.

Should the landlords fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

### Conclusion

The tenant is granted a monetary order for \$230.00.

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* and is being mailed to both the applicant and the respondent.

Dated: December 17, 2012.

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Residential Tenancy Branch