



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC and FF

### Introduction

This hearing was convened on the tenant's application of October 24, 2012 seeking a Monetary Order for return of his security deposit retained without consent or without the landlord having made application for dispute resolution to claim against it. The tenant also sought monetary compensation for losses incurred as a result of an interruption of the electrical service during the tenancy.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of the security deposit and the losses claimed?

### Background and Evidence

This tenancy began on September 1, 2011 and ended on September 30, 2012. Rent was \$650 per month and the landlord holds a security deposit of \$325 paid at the beginning of the tenancy.

The tenant had submitted a copy of his letter to the landlord dated September 28, 2012 providing his forwarding address to the landlord and requesting return of the deposit.

The landlord concurred that he had not returned the deposit but submitted a letter he had sent to the tenant dated October 11, 2012 listing unpaid rent, damage to the rental unit and cleaning costs exceeding the value of the security deposit. However, the landlord stated he was not aware of the need to obtain the tenant's written consent or make application to claim against the deposit.

The landlord submitted evidence of the damages which cannot be taken into account on the tenant's application for return of the deposit but the landlord remains at liberty to make his own application on those claims..

The tenant also made claim for losses incurred as a result of an interruption in hydro service during the tenancy. However, the landlord submitted a copy of a dispute resolution decision issued on July 25, 2012 in which the tenant had made the same claims and his application was dismissed in its entirety for want of evidence.

### 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, I find that the landlord breached section 38(1) of the *Act* by failing to return the deposit or to make application for dispute resolution to claim against it.

Therefore, I find that the landlord must return the security deposit in double.

As to the tenant's claim for losses associated with the interruption in electrical services, I find that claim was addressed and dismissed in the hearing of July 25, 2012.

Therefore, I find that part of the tenant's application is *res judicata* (previously adjudicated) and cannot be heard again. That part of the application is dismissed without leave to reapply.

As the application has partially succeeded, I find that the tenant is entitled to recover one-half of the \$50 filing fee for this proceeding from the landlord.

Therefore, I find that the tenant is entitled to a Monetary Order calculated as follows:

Security deposit (No interest due)	\$325.00
To double security deposit re section 38(6) of the <i>Act</i>	325.00
Filing fee	25.00
<b>TOTAL</b>	<b>\$675.00</b>

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$675.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

The tenant's claim for other losses is dismissed without leave to reapply.

The landlord remains at liberty to make application on his claims.

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: January 23, 2013

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Residential Tenancy Branch

