



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### 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, doubled.

The tenant and her representative appeared; the landlord did not appear.

The tenant testified that she served the landlord with the Application for Dispute Resolution and Notice of Hearing (the Hearing Package) by registered mail on November 5, 2012. The tenant provided evidence of the tracking number and receipt for the registered mail. The issue of the landlord's correct address will be addressed later in this Decision.

I find the landlord was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant and her representative were provided the opportunity to present their affirmed 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 for her security deposit, double the original amount?

### Background and Evidence

The evidence of the tenant is that this tenancy began on May 1, 2010, ended on August 29, 2012, and a security deposit of \$850.00 was paid by the tenant at the beginning of the tenancy.

The tenant submitted that she sent the landlord her written forwarding address on September 6, 2012, in a letter.

When questioned further as to whether the landlord's correct address was used, as the landlord's contact information was not listed on the tenancy agreement as required by the Act, the representative said that they attempted to deliver the tenant's written forwarding address by hand; however the landlord no longer lived there. The tenant then sent her written forwarding address in a letter on September 6, 2012, in case the landlord had filed a Change of Address Notification. That letter was returned as undeliverable.

Thereafter the representative said that he then conducted a search of the BC Assessment records and located the landlord's physical address, at which point a second letter containing the tenant's written forwarding address was sent to that address, on October 11, 2012.

According to the tenant, she received an email from the landlord's authorized agent on October 15, 2012, requesting her new address, she replied and the agent acknowledged receipt of the email.

Thereafter a third letter containing the tenant's written forwarding address was sent on October 26, 2012.

As of the time of the filing of the application for dispute resolution, the tenant had not received any portion of her security deposit; however after serving the landlord with the Hearing Package for the present hearing, the tenant received a cheque from the landlord, in the amount of \$328.00. I note that the cheque was sent to the address used by the tenant as her forwarding address.

The tenant submitted that on December 24, 2012, they sent the landlord a letter via regular mail, informing him that as he did not pick up his registered mail containing the Hearing Package, they were sending a courtesy copy of all the materials contained in the original Hearing Package. The letter also informed the landlord that if he chose not to attend, the Dispute Resolution Officer may find it easy to issue an order against him.

The tenant said that the week of this hearing, she received another cheque from the landlord, in the amount of \$522.00, which together with the first cheque she received, totals the amount of her original security deposit.

The tenant testified that there was no move-in or move-out condition inspection report and that she has not signed over any portion of her security deposit to the landlord.

The tenant's relevant evidence included registered mail receipts, a letter dated September 24, 2012 to the landlord, a letter informing the Residential Tenancy Branch ("RTB") of the receipt of \$328.00, showing a copy to the landlord, dated November 14, 2012, a tenancy agreement, a notice to the landlord of the tenant's vacating the rental

unit, the September 6, 2012, letter previously referenced, the October 11, 2012, letter previously referenced, a letter of October 26, 2012, to the landlord, and a December 24, 2012, letter to the landlord.

There is no evidence before me that the landlord filed for Dispute Resolution.

### Analysis

Based on the relevant oral and written evidence and a balance of probabilities, I find as follows:

Based upon the tenant's evidence of the landlord having responded to her letters via email and by sending two different refund cheques after letters sent to his home address, I find the landlord was properly served the Application for Dispute Resolution and Notice of Hearing according to section 89 of the Act.

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, the tenant's undisputed evidence shows that the last day of the tenancy was August 29, 2012, the landlord received the tenant's written forwarding address via letter, dated October 11, 2012, deemed to have been served upon the landlord 5 days later, pursuant to section 90 of the Act, the landlord has not applied for arbitration claiming against the security deposit, and did not return the tenant's security deposit until after the tenant filed for dispute resolution. As noted above, the last payment made by the landlord was the week of the hearing.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant, of which here there is no evidence. Therefore, I find that the landlord was not entitled to retain any portion of the tenant's security deposit and under section 38 I must order the landlord to pay the tenant double her security deposit.

I therefore find the tenant has established a monetary claim in the amount of \$850.00, comprised of her security deposit of \$850.00, doubled to \$1700.00, minus the two payments made by the landlord totalling \$850.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$850.00, which I have enclosed with the tenant's Decision.

Should the landlord 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

I grant the tenant's application and have issued a monetary order for the sum of \$850.00. The landlord is directed to forthwith transmit the amount of \$850.00 to the tenant.

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: February 01, 2013

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Residential Tenancy Branch

