



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Farwest Investments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNSD and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application. The Application for Dispute Resolution has been amended, at the request of the Tenant, to reflect the proper spelling of the Agent for the Landlord's surname, as provided by him at the hearing.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were not served to the Landlord. As they were not served to the Landlord, the documents were not accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 15, 2012; that the tenancy ended on December 01, 2012; that the Tenant paid a security deposit of \$420.00; that the Tenant did not authorize the Landlord, in writing, to retain any portion of the security deposit; that the Landlord received a forwarding address for the Tenant sometime in November of 2012; and that the Landlord mailed a cheque for \$375.00 to the Tenant, which was dated January 07, 2013.

The Agent for the Landlord stated that he did not file an Application for Dispute Resolution claiming against the security deposit, although he believes the “company” filed one. The Tenant stated that she was not aware that the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

Neither party was permitted to discuss the condition of the rental unit at the end of the tenancy, as the Landlord has not filed a claim for compensation regarding the condition of the unit and that matter is not, therefore, an issue to be determined in these proceedings.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$420.00; that the tenancy ended on December 01, 2012; that the Landlord returned \$375.00 of the security deposit; that none of the security deposit had been returned until January of 2013; that the Tenant did not authorize the Landlord, in writing, to retain any portion of the security deposit; and that the Tenant provided the Landlord with a forwarding address, in writing, in November of 2012.

I find that the Landlord has submitted insufficient evidence to show that the Landlord filed an Application for Dispute Resolution claiming against the security deposit. I base this conclusion primarily on the absence of a file number or other documentary evidence that supports the Agent for the Landlord’s belief that an Application for Dispute Resolution has been filed by the Landlord.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the deposit. I find that the Landlord failed to comply with section 38(1), as the Landlord has not filed an Application for Dispute Resolution and no part of the deposit was paid until more than fifteen days after the tenancy ended and the date the Landlord received a forwarding address for the Tenant.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

### Conclusion

The Tenant has established a monetary claim of \$890.00, which is comprised of double the security deposit and \$50.00 as compensation for filing this Application for Dispute Resolution. After reducing the claim by the \$375.00 that has been returned to the

Tenant, I grant the Tenant a monetary Order in the amount of \$515.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: March 26, 2013

---

Residential Tenancy Branch

