



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Achilles Holding Ltd.  
and [tenant name suppressed to protect privacy]

## **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 parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the evidence was discussed. The tenant did not submit written evidence and the tenant confirmed receiving the landlord's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-The appearing landlord stated that she was an agent of the corporate landlord and that the corporate name should be listed on the application for dispute resolution. Additionally, the landlord stated her surname was incorrect on the tenant's application. As a result of the landlord's agent's submissions, I have amended the application to add the corporate name and to change the surname of the landlord's agent.

*Preliminary issue #2*-Prior to the start of the testimony, I instructed the tenant to have her witness leave the room out of audible range. When the time came for the witness to

testify, the tenant immediately began speaking to her witness, which led me to conclude the tenant was present for the entire hearing. As a result, I did not allow the tenant's witness to testify.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of her security deposit?

Background and Evidence

I was provided undisputed evidence that this tenancy began on July 15, 2007, ended on October 31, 2012, and the tenant paid a security deposit of \$225.00 at the beginning of the tenancy.

The tenant submitted that she gave her written forwarding address to the landlord in September, 2012, by depositing the document under the landlord's agent's door.

The tenant said that there was not a move-in condition inspection report or a move-out condition inspection report.

The tenant stated that the landlord has not returned her security deposit.

The landlord acknowledged receipt of the tenant's written forwarding address in September 2012, with the tenant's notice to vacate.

The landlord confirmed that they have not returned the tenant's security deposit; however, the landlord contended that the tenant damaged the rental unit during the tenancy.

When questioned, the landlord stated that there was no move-in condition inspection report in the tenant's file when the corporate landlord assumed ownership of the residential property. When questioned further, the document provided by the landlord, a condition inspection report, was a move-out condition inspection report unsigned by the tenant.

The landlord said that they attempted to call the tenant to arrange a final inspection, but as the tenant said she would not attend, the landlord did not send any written notices to the tenant with an opportunity to inspect.

The landlord's evidence included the incomplete move-out condition inspection report and a receipt.

### Analysis

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

Section 38(1) of the *Act* requires a landlord 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 receiving the tenant's forwarding address in writing after the end of the tenancy if the tenant's right to the security deposit have not been extinguished. I do not find that the tenant's right to the security deposit have been extinguished by operation of the *Act*.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In this case, the undisputed evidence shows that the landlord received the tenant's written forwarding address in September 2012, the last day of the tenancy was October 31, 2012, and the landlord has not returned the tenant's security deposit.

I also note that the landlord did not file an application claiming against the tenant's security deposit for damages; however, the landlord had previously extinguished their right to claim against the deposit by making an application when they or their predecessor landlord failed to complete and provide a move-in condition inspection report, pursuant to section 24(2) of the *Act*.

Due to the above, I find the tenant is entitled to a monetary award in the amount of \$454.97, comprised of her security deposit of \$225.00, doubled to \$450.00, and interest on the original security deposit of \$4.97.

### Conclusion

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the *Act* in the amount of \$454.97, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from 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* and is being mailed to both the applicant and the respondent.

Dated: March 28, 2013

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Residential Tenancy Branch

