



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This was hearing with respect to the tenant's application for a monetary order. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend, although the landlord was served with the application and Notice of Hearing by registered mail and by delivery to the landlord's resident manager at the rental property.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order because the landlord failed to return his security deposit within the time permitted by the *Residential Tenancy Act*?

### Background and Evidence

The rental unit is an apartment in Duncan. The tenant paid a security deposit of \$630.00 at the commencement of the tenancy in or about September, 2009. The tenant moved out of the rental unit at the end of November, 2012. He participated in a condition inspection with the landlord's representative at the time of move-out. He signed the move-out condition inspection report and agreed to the deduction of \$90.00 for carpet cleaning and \$60.00 for repairs. He provided his forwarding address in writing on the condition inspection report. The tenant testified that he made several trips back to the rental property to request his deposit, but it was not returned until January 14, 2013 when he received a cheque from the landlord in the amount of \$480.00.

The tenant has claimed that he is entitled to be paid a further \$630.00, being the amount of his original deposit because the landlord did not return the deposit within the 15 day period required by section 38 of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies.

Analysis and conclusion

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenant double the amount of the security deposit.

I am satisfied that the tenant provided the landlords with his forwarding address in writing when he completed the condition inspection report, and I find that the tenant served the landlords with documents notifying the landlord of this application as required by the *Act*.

The tenant agreed to the deduction of \$150.00 from his security deposit and the deposit amount that was to be returned to him within 15 days was the sum of \$480.00. The said amount was not returned until January 14, 2013 and I find that the tenant is entitled to double the said amount but not to the original deposit amount of \$630.00 because the tenant agreed that the landlord could retain \$150.00 from the original deposit and the effective security deposit subject to the provisions of section 38 was the sum of \$480.00. The tenant did not claim payment of the filing fee for his application and I make no award with respect to it. I grant the tenant a monetary order against the landlords in the amount of \$480.00. This order may be registered in the 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: April 12, 2013

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Residential Tenancy Branch

