



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 her security deposit and to recover the fee for filing this Application.

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 Tenant submitted documents to the Residential Tenancy Branch. She stated that she sent copies of these documents to the Landlord, via courier, on April 16, 2013 and that they were delivered on April 17, 2013. The Landlord acknowledged receiving the Tenant's evidence on April 17, 2013 or April 18, 2013 and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch. He stated that he sent copies of these documents to the Tenant, via registered mail, on April 18, 2013. The Tenant acknowledged receiving the Landlord's evidence on April 22, 2013 and it was accepted as evidence for these proceedings. The Tenant declined the opportunity for an adjournment for the purposes of reviewing the Landlord's evidence.

### **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 March 01, 2012; that the Tenant paid a security deposit of \$575.00; and that the Landlord did not have written authorization to retain any portion of the security deposit.

The Tenant stated that the tenancy officially ended on October 31, 2012 but that the rental unit was vacated on October 28, 2012. She stated that she and her husband entered the United States on October 28, 2012. She submitted hotel receipts from hotels in the United States, in the name of her husband, dated October 30, 2012 and November 01, 2012. The receipt dated November 01, 2012 indicates that two people occupied the room.

The Landlord stated that when he went to the rental unit on November 01, 2012 the female Tenant was still cleaning the rental unit. The Witness for the Landlord, who is his wife, stated that she observed the female Tenant at the rental unit on October 31, 2012.

The Landlord submitted a letter from the occupant who moved into the rental unit after the Tenant left, in which he declared that he has been occupying the rental unit since November 07, 2012 and that the previous tenants left after October 1, 20xx. The Landlord stated that he submitted this letter in error and that the author of the letter wrote a second letter, which is the letter he intended to submit in evidence. He was given the opportunity to read the second letter. In the second letter the Landlord stated that the new occupant wrote that he has lived in the rental unit since October 07, 2012, and that they moved in one week late because the previous tenant did not vacate on time.

The Landlord and the Tenant agree that a condition inspection report was completed at the start of the tenancy.

The Landlord stated that he verbally arranged to inspect the rental unit on October 27, 2012; that when he arrived to inspect the unit the Tenant advised him she was not ready for the inspection; they agreed to meet again on October 28, 2012 for the purposes of completing the inspection; that when he arrived on October 28, 2012 the rental unit was still not clean; he told her he would return on October 31, 2012 to inspect the rental unit; and that when he returned on October 31, 2012 he determined that it was still not ready for inspection. The Landlord acknowledged that he never scheduled a time to complete a final inspection in writing.

The Tenant stated that when the Landlord arrived to inspect the unit on October 27, 2012 she was not ready for the inspection; they agreed to meet again on October 28, 2012 for the purposes of completing the inspection; that the unit was inspected on October 28, 2012, although no report was completed; and that another time to inspect the rental unit was not scheduled.

The Landlord and the Tenant agree the Landlord wrote a cheque to the Tenant, in the amount of \$575.00, on October 28, 2012, which represented a full refund of the security deposit. The Landlord stated that he wrote this cheque even though the unit was not clean on October 28, 2012 because he believed the Tenant would finish cleaning the unit. The parties agree that the cheque was post dated March 15, 2012 and that the Landlord placed a "stop payment" on the cheque prior to March 15, 2012.

The Tenant stated that she sent the Landlord her forwarding address, via registered mail, on November 16, 2012. The Tenant submitted a copy of a Canada Post receipt, dated November 16, 2012. There is nothing on this receipt that shows where this package was mailed.

The Landlord stated that he does not recall receiving the forwarding address by registered mail, although he did receive a letter containing the forwarding address for the Tenant in his mail box. He cannot recall specifically when he received the address, although he believes it was "just before Christmas".

The Landlord stated that he did not file an Application for Dispute Resolution claiming against the security deposit until April 18, 2013.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$575.00; that the Tenant did not give the Landlord written permission to retain any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit until April 18, 2013.

Although the Landlord did provide the Tenant with a post dated cheque, in the amount of \$575.00, on October 28, 2012, I find that this does not constitute a refund of the security deposit as the payment was cancelled prior to the effective date of the cheque.

On the basis of the testimony of both parties, I find that the tenancy had ended and the rental unit had been vacated by November 01, 2012. For the purposes of my decision, it does not matter whether the tenancy ended on October 31, 2012, as the Tenant contends, or on November 01, 2012, as the Landlord contends. Both parties have the right to submit evidence that clarifies the end date of the tenancy and/or when the unit was vacated if that is relevant in future disputes.

I find that the Tenant sent her forwarding address, via registered mail, to the Landlord on November 16, 2012. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who was certain of the date the address was mailed, and by the Canada Post receipt which corroborates her testimony.

In the absence of evidence that refutes the Landlord's testimony that he did not receive the forwarding address until "just before Christmas", I find that the Landlord had received a forwarding address for the Tenant prior to December 25, 2012. In determining this matter I find it possible that delivery was delayed due to an error by Canada Post.

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 and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and the Landlord did not file an Application for Dispute Resolution until April 18, 2013, which is more than fifteen days after the tenancy ended and the Landlord received a forwarding address, in writing.

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.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing the Application.

### Conclusion

The Tenant has established a monetary claim of \$1,200.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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: April 25, 2013

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Residential Tenancy Branch