



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This was an application by the tenant for the return of her security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant and the landlord participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

### Background and Evidence

The rental unit is an apartment in a house in Vancouver. The tenancy began on January 1, 2012. Monthly rent was \$650.00 payable on the first day of each month. The tenant paid a security deposit of \$325.00 in December, 2011. At the end of December, 2012 concurrent with her payment of January rent the tenant gave notice that she would move out of the rental unit at the end of January. The tenant moved out at the beginning of January, but a new tenant moved into the rental unit immediately after the tenant moved out and paid rent for the month of January. The landlord was not out of pocket any rent for January. The landlord cashed the tenant's January rent cheque, but later refunded to the tenant all but \$30.00 of January's rent.

On January 11, 2013 the tenant gave the respondent a handwritten letter with her forwarding address and a request for the return of her security deposit. The tenants' security deposit was not returned and on February 4, 2013 the tenant filed her application for dispute resolution to claim her deposit. At the hearing she requested payment of double the amount of her deposit plus the sum of \$30.00, being the portion of January rent that was not returned to her.

The landlord testified at the hearing that he is not the owner of the rental property, but at the request of the owner he agreed to act as landlord. He said that although he was named as landlord in the tenancy agreement and the security deposit and rent payments were made to him, he simply acted as a conduit to the owner and all funds, including the security deposit were paid to the owner. He testified that it was the owner who made the decision to not return the tenant's security deposit to her.

### Analysis

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 tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with her forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$650.00 plus the \$30.00 claimed for the remainder of January's rent for a total award of \$680.00. The tenant is entitled to make her claim against the person named as landlord in the tenancy agreement, even though it is the owner who will be ultimately responsible for paying the claim to the tenant or for reimbursing the respondent for any amount that he pays to the tenant and I grant the tenant a monetary order against the landlord in the said amount. 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: May 1, 2013

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Residential Tenancy Branch

