



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was scheduled to deal with a tenant's application for return of the security deposit. Both parties appeared or were represented at the originally scheduled hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The Application was amended to correctly identify the tenant, as it appears on the tenancy agreement. The Application was amended to correctly reflect the identity of the landlord. The Application was amended to reflect the correct amount of the security deposit paid by the tenant and the tenant's request that it be doubled pursuant to section 38 of the Act.

The originally scheduled hearing was adjourned and the parties were instructed to provide me and the other party with additional evidence, namely: the tenant's copy of the move-out inspection report and the landlord's invoices for repair or renovation work performed in the unit after the tenancy ended.

Notices of Adjourned Hearing were sent to both parties at the addresses confirmed during the hearing. The landlord did not appear at the reconvened hearing. The tenant confirmed that she served the landlord with the additional evidence via registered mail sent on April 24, 2013 and received by the landlord on April 25, 2013. The tenant also confirmed receiving the landlord's additional evidence by registered mail.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

### Background and Evidence

The tenancy commenced in February 2008 and the tenant paid a security deposit of \$350.00. The rental unit had been occupied by the tenant's sister and mother at the end of the tenancy. On June 12, 2013 the tenant gave the landlord notice to end the tenancy. A move-out inspection was conducted on June 26, 2013 and an inspection report signed by both parties. The tenant's forwarding address appears on the move-out inspection report.

The move-out inspection report contains a section that deals with the security deposit, entitled "Security Deposit Statement". Whether the tenant authorized deductions from the security deposit was the main issue under dispute.

The security deposit statement presented by the landlord indicated that the tenant authorized a deduction of \$350.00 for "liquidated damages" and that one-half of July's rent was reversed due to "partial reno". The tenant testified that her copy of the security deposit statement did not include the above notations. Both parties confirmed that the tenant had been provided a yellow carbon copy of the move-out inspection report, including the security deposit statement, upon completion of the move-out inspection.

I requested the tenant provide me with the yellow carbon copy to me for my review which she did. I requested the landlord provide me with copies of receipts/invoices with respect renovating the rental unit after the tenancy ended, which he did.

The yellow carbon copy submitted by the tenant is devoid of any notations or amounts pertaining to deductions or liquidated damages or a "partial reno".

The landlord's receipts/invoices are consistent with upgrades and improvements undertaken in the rental unit and included such things as: new blinds; doors and countertops; bi-pass doors; appliances; drywall and paint invoiced between July 9, 2012 and August 13, 2012.

The landlord testified that it was decided to proceed with a renovation after attempts to re-rent the unit were unsuccessful. The tenant called into question the position put forth by the landlord as she submitted that there were not showings during the last month of the tenancy and three phone calls to the landlord's office to enquire about whether the unit had been re-rented and return of her security deposit went unanswered or were unreturned by the landlord.

### Analysis

Under the Act, a landlord may seek the tenant's written consent to make deductions from a security deposit. I was presented with opposing evidence as to whether the tenant authorized the landlord to make deductions from the security deposit.

Upon review of the tenant's yellow carbon copy of the security deposit statement I am satisfied the document she presented to me represents the document signed by the parties at the end of the move-out inspection and that the tenant did not authorize the landlord to make deductions from the security deposit. Rather, the document put forth by the landlord appears to indicate the landlord altered the security deposit statement after it was signed by the tenant to give the appearance that the tenant had authorized a deduction of \$350.00 for liquidated damages. The landlord is cautioned that altering a document after it is signed with the intent to deceive is a fraud act.

As the tenant provided her forwarding address to the landlord on June 26, 2012 and the tenant did not authorize the landlord to made deductions from her security deposit; under section 38(1) of the Act the landlord was obligated to either return the security deposit to the tenant or file an Application for Dispute Resolution seeking authorization to retain it. The deadline for returning the security deposit or filing an Application for Dispute Resolution is 15 days after the landlord receives the tenant's forwarding address in writing or the date the tenancy ends, whichever date is later.

A landlord that fails to comply with the requirements of section 38(1) of the Act must pay the tenant double the security deposit pursuant to section 38(6) of the Act.

In this case, the landlord did not return the security deposit and did not file an Application for Dispute Resolution seeking authorization to retain it and more than 15 days elapsed since the end of the tenancy. Accordingly, the landlord violated section 38(1) of the Act and the tenant is entitled to return of double the security deposit under section 38(6) of the Act.

The tenant is also entitled to accrued interest on the deposit which I calculate to be \$4.81. I further award the tenant the filing fee paid for this Application.

In light of the above, the tenant is provided a Monetary Order calculated as follows:

Double security deposit	\$ 700.00
Interest on security deposit	4.81
Filing fee	<u>50.00</u>
Monetary Order	\$ 754.81

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court as necessary.

### Conclusion

The tenant has been awarded double the security deposit, interest on the security deposit and recovery of the filing fee in the total amount of \$754.81. The tenant has been provided a Monetary Order in this amount to serve upon the landlord and enforce as necessary.

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 28, 2013

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Residential Tenancy Branch