



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW DECISION

Dispute Codes      MNSD, FF

### Introduction

This was a review hearing with respect to the tenant's application for the return of his security deposit, including double the amount of the deposit. The original hearing was conducted by conference call on April 3, 2013. The tenant participated in the hearing; the landlord did not attend. In the April 3, decision and order the tenant was awarded double the amount of his security deposit and the \$50.00 filing fee paid for his application. The landlord's application for review was granted on the ground that she was unable to attend the original hearing due to circumstances that could not be anticipated and were beyond her control. A new hearing was ordered and I was appointed to conduct the hearing by conference call.

### Issue(s) to be Decided

Should the original decision and order be confirmed, varied or set aside?

### Background and Evidence

The rental unit is a suite in the landlord's house. The tenancy began on January 31, 2012. Monthly rent was \$685.00. The tenant paid a \$342.50 security deposit at the start of the tenancy. The tenant moved out of the rental unit on January 31, 2013. He testified that he mailed a letter to the landlord with his forwarding address on February 14, 2013. The landlord denied receiving the letter. After she was served with the tenant's application for dispute resolution she submitted a letter as evidence on the tenant's application. The letter was dated March 25, 2013. In the letter the landlord said in part:

I have been informed by the Landlord Tenant Branch Information Center in Vancouver, that I 'do not' have to file for arbitration to keep (name of tenant)'s

security deposit for permanent carpet damage to my rental Suit, until I receive "NOTICE OF FORWARD ADDRESS IN WRITING".

To date, no written notice has been received.

On April 1, 2013 the tenant delivered his forwarding address in writing to the landlord. This was two days before the original hearing was held on April 3, 2013. The landlord acknowledged that she received it.

The landlord submitted her application for review consideration on April 11, 2013. The decision granting her review application was made on April 12, 2013. The landlord claimed that the tenant damaged the carpets in the rental unit and the cost to rectify the damage exceeds the amount of the tenant's security deposit. The landlord has not applied to retain the deposit or to claim a monetary award for the carpet damage.

### Analysis

The landlord denied receiving the tenant's letter mailed to her on February 14, 2013, but she did acknowledge that she received the tenant's written forwarding address on April 1, 2013. Her submission to the Residential Tenancy Branch on March 25, 2013 makes it plain that she was aware that she must file for arbitration to make a claim after she receives the tenant's forwarding address if she wants to retain the deposit. The fact that she applied to review the original decision does not alter her obligations. More than 15 days have passed since she received the tenant's address according to her own acknowledgement and she has not made application to retain the deposit.

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.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and I find that the original decision and order made on April 3, 2013 should be confirmed.

Conclusion

The landlord is free to pursue a claim for a monetary award if she chooses to do so, but her right to claim the security deposit has been extinguished and I confirm the original decision and order dated April 3, 2013 on this review hearing.

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: June 7, 2013

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Residential Tenancy Branch

