



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for return of double the security and pet damage deposit. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Are the tenants entitled to payment of double the deposits paid?

### Background and Evidence

The month-to-month tenancy commenced October 1, 2012 and ended February 28, 2013. The monthly rent of \$1500.00 was due on the first day of the month. The tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. Move-in and move-out inspections were completed and condition inspection reports were completed both times.

The tenants provided their forwarding address in writing to the landlord's agent on March 1, 2012. On the same date the agent advised the landlord by e-mail that the tenants were entitled to a full refund of the security deposit and pet damage deposit. The tenants' forwarding address was included in that e-mail.

The rental unit is in Fort St. John and the landlord's office is in Campbell River.

The landlord testified that she directed her staff to include the refund payment in the next cheque run which was scheduled for March 13. She also testified that the cheque, in the amount of \$1500.00 was issued and was mailed by regular Canada Post mail by her staff on March 14 to the address specified by the tenants. She left on holiday on March 15 and did not return until April 16.

The tenants testified they did not receive the cheque until April 9, a few hours after they had filed this application for dispute resolution. They testified that the cheque was dated March 13. They also testified that the date on the envelope was April 4 but they could not make out where the envelope was posted. They did not file the envelope or a copy thereof as evidence.

The landlord testified that the cheque was cashed on April 10.

### Analysis

On any application the onus of proof is on the applicant to prove every element of their claim on a balance of probabilities.

Section 38(1) of the *Residential Tenancy Act* states that within 15 days after the tenancy ends or the landlord receives the tenant's forwarding address in writing, the landlord must either repay the deposit(s) or file an application for dispute resolution claiming against the deposit(s). In this case, the landlord received the tenants' forwarding address in writing on March 1, 2013.

The *Act* states that the landlord must repay the deposit within 15 days; not that the tenant must receive the payment within 15 days. Regular mail is one of the means permitted by the legislation by which a landlord may make this payment to a tenant. Once the payment has been mailed, the landlord no longer has any control over the actual delivery of the envelope or the cheque inside it. Accordingly, a landlord who mails a deposit to a tenant within the 15 day time limit has complied with the legislation and is not subject to the section 38(6) penalty.

In this case there is only the contradictory oral testimony of the parties as to the date on which the envelope was mailed to the tenants. While the tenants testified that the post mark on the envelope was April 4 they did not file the actual envelope or a copy thereof in support of their testimony. This is not sufficient evidence to tip the balance of probabilities in the tenants' favour so as to make the landlord subject to the section 38(6) penalty.

### Conclusion

The tenants' claim is dismissed.

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 05, 2013

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Residential Tenancy Branch