



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding King's Court Apartments  
Ratzlaff Development Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNSD; FF

### **Introduction**

This is the Tenant's application for a monetary order for double the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail, sent on January 30, 2013. It was also determined that the Landlord sent the Tenant its documentary evidence by registered mail, sent April 12, 2013.

### **Preliminary Matters**

With consent of the parties, the Tenant's Application was amended to include the Landlord KCA.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

This tenancy ended on October 31, 2012. The Tenant paid a security deposit in the amount of \$425.00 on September 1, 2010.

Both parties were present on October 31, 2012, for a move-out condition inspection. The Tenant testified that the Landlord decided to keep some of the security deposit without her consent. The Tenant stated that she left the rental unit in reasonably clean condition, with the exception of the walls. She stated that the Landlord had told her not to worry about the walls because they were being painted for the new occupant. The

Tenant stated that she did not agree that the Landlord could retain any of the security deposit.

The Landlord's agent stated that the rental unit was not clean, except for the bathroom. She stated that the Landlord deducted the "standard" fee of \$125.00 for cleaning and \$100.00 for shampooing the carpets and returned the balance of \$200.00 to the Tenant on November 15, 2012. The Landlord provided a copy of a "Cleaning and Damage Check Form" in evidence. The Landlord has not filed an application for dispute resolution with respect to the security deposit.

The Tenant testified that she received the partial refund of the security deposit on November 19, 2012. She stated that she did not receive a copy of the "Cleaning and Damage Check Form" until she received copies of the Landlord's documentary evidence in April, 2013.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The "Cleaning and Damage Check Form" which was completed on October 31, 2012, provides a forwarding address for the Tenant. The Landlord testified that she mailed a portion of the security deposit to the Tenant on November 15, 2012, which is within the 15 day time limit to do so. However, I find that the Landlord did not have a right under the Act to retain \$250.00 of the Tenant's security deposit. The Landlord did not file an application for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit that the Landlord withheld ( $\$250.00 \times 2 = \mathbf{\$500.00}$ ).

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlord retains the right to file an application for damages under Section 67 of the Act, if it so desires.

**Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of **\$550.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 06, 2013

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Residential Tenancy Branch

