



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC

### Preliminary Issues

The Landlord confirmed the name listed as respondent on the Tenant's application was the name of the building and not the Landlord's name. The Landlord operates as a proprietor and confirmed that his personal name should be listed as he does not operate under a corporate name. Accordingly, the style of cause was amended to include the Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 25, 2013, by the Tenant to obtain a Monetary Order for: the return of their security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the move out and move in inspection report form; a list of items that are required to be cleaned by a tenant at move out; and the Resident Managers written statement.

The Tenant submitted documentary evidence which included a copy of the move in and move out inspection report form.

The parties confirmed they entered into a written fixed term tenancy agreement that began on September 1, 2011 and switched to a month to month tenancy after one year. Rent began at \$1,140.00 and was subsequently raised to \$1,220.00 per month and was payable on the first of each month. On August 31, 2011 the Tenant paid a security deposit of \$570.00. The move in report was completed on August 31, 2011 and the move out inspection report was completed on February 1, 2013. The Tenant provided the Resident Manager with his forwarding address during the move out inspection on February 1, 2013.

The Tenant testified that during the move out inspection the Resident Manager told him he would have to pay for some cleaning of the stove but he did not know how much it would cost. He noted that there was only a small amount of damage caused to a floor and that he was told not to worry about it because the unit was going to be renovated. He stated he cleaned the unit to the best of his ability, cleaning the bathroom and kitchen, and he acknowledged that there may be a small charge to clean the stove as he did not have the chemical to scrub it. He signed the move out form with a question mark beside a blank amount for a deduction. He never agreed to an amount and did not agree to have the Landlord keep \$300.00.

The Tenant stated that he is seeking the return of double his deposit. He confirmed receiving a partial return of \$270.00 about two weeks after the end of his tenancy. He recalls it being on a Monday so he thinks it may have received it on approximately February 11, 2013.

The Resident Manager testified and confirmed that they had not determined an amount to be deducted from the security deposit during the move out and it was him who wrote

the question mark on the form. He stated that he discussed the cleaning requirements with the Tenant and advised that he did not know the exact costs at that time.

The Owner testified that he was the one who decided to deduct \$300.00 from the security deposit and it was him who wrote that amount on the move out form after the Tenant had signed the form. He confirmed that he did not have the Tenants written permission to deduct the amount of \$300.00 and thought that the question mark allowed him to enter the amount after the fact.

### Analysis

All of the testimony and documentary evidence was carefully considered. I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

In this case the Landlord issued the Tenant a partial payment of \$270.00, leaving a balance of \$300.00 that was withheld by the Landlord.

The Landlord confirmed that he did not apply for dispute resolution to keep the \$300.00 from security deposit; he does not have an Order allowing him to keep the \$300.00; he does not have the Tenant's written consent to retain the exact amount of \$300.00 from the security deposit; and he changed the move out condition inspection form adding the deduction of \$300.00 without the Tenant's approval on the exact amount.

The evidence supports that the Tenant provided the Landlord with his forwarding address on February 1, 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit **in full** or file for dispute resolution no later than February 16, 2013.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against

the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find that the Tenant has succeeded in proving his claim for the return of double his security deposit plus interest as follows:

Double the Security Deposit (2 x \$570.00)	\$1,140.00
LESS: Refund of \$270.00	<u>- 270.00</u>
Amount due to the Tenant	<b><u>\$ 870.00</u></b>

As the Tenant has succeeded with their application I award recovery of the **\$50.00** filing fee. fc

### Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$920.00** (\$870.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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 22, 2013

---

Residential Tenancy Branch