



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit, and the recovery of their filing fee.

The male tenant and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the male tenant presented the tenants' evidence. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlord confirmed receiving the tenants' evidence prior to the hearing and that she had the opportunity to review that evidence prior to the hearing. The landlord also confirmed that she did not submit evidence in response to the tenants' application.

### Preliminary Matter

During the hearing, the landlord was cautioned on several occasions for interrupting the Arbitrator and the tenant. The landlord was upset that she could not discuss her claim for damage to the rental unit during the hearing. The landlord was informed that she did not submit an application and as a result, damages were not relevant to the matter before me and that she was at liberty to submit her own application under the *Act* for damages within two years of the end of the tenancy according to the *Act*. The landlord was informed that the tenants' application for the return of double their security deposit and the recovery of the filing fee were the only matters before me that I would be considering.

### Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

### Background and Evidence

A month to month tenancy began on June 15, 2010. Monthly rent in the amount of \$1,400.00 was due on the first day of each month. The tenants paid a security deposit of \$300.00 at the start of the tenancy which the landlord continues to hold.

The tenant testified that on December 31, 2012 the tenants provided written notice to end the tenancy to the landlord effective January 31, 2013. The landlord disputed that the notice was in writing but agrees to have accepted the tenants' notice that the tenancy would be ending on January 31, 2013. The tenant stated that on February 3, 2013, he returned the keys and a move-out condition inspection report was completed with the landlord. The landlord disputed the tenant's testimony and stated that the tenants did not vacate the rental unit until February 7, 2013.

The tenant stated that on February 3, 2013, the tenants provided their written forwarding address to the landlord on the move-out condition inspection report. The landlord disputed the tenant's testimony and stated that she received the tenants' forwarding address on February 7, 2013. The landlord confirmed that she did not return the security deposit or file an application claiming towards the security deposit.

### Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Tenants' claim for the return of double the security deposit** – The tenant stated the tenancy ended on February 3, 2013 when he returned the keys to the landlord while the landlord claims the tenancy ended on February 7, 2013, four days later. Section 38 of the *Act* applies which states:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[emphasis added]

In the matter before me, **I find** that the landlord did not repay the security deposit or make an application for dispute resolution claiming against the deposit within 15 days after the latest date provided as the end of tenancy, February 7, 2013. **I find** that the landlord agreed that she received the tenants' written forwarding address by February 7, 2013. Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit to the tenants or file an application to claims towards the security deposit within 15 days of receiving the forwarding address of the tenants in writing on February 7, 2013. Therefore, **I find** the tenants are entitled to the return of double the original security deposit of \$300.00 for a total amount of **\$600.00**. I note that the security deposit has accrued no interest since the start of the tenancy.

As the tenants were successful with their application, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the tenants have established a total monetary claim in the amount of **\$650.00**, comprised of \$600.00 for the doubled security deposit plus the \$50.00 filing fee. **I grant** the tenants monetary order pursuant to section 67 of the *Act* in the amount of **\$650.00**. This order may be served on the landlord and filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the tenants have established a total monetary claim of \$650.00. I grant the tenants a monetary order under section 67 in the amount of \$650.00. This order may be served on the landlord and filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 12, 2013

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Residential Tenancy Branch

