



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prime Plus Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of her security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-Although the Residential Tenancy Branch ("RTB") records showed that the hearing for this date was a matter of cross applications of the parties, the landlord had not filed an application for dispute resolution; rather the tenant had filed two applications both seeking the very same remedy. In response to my question the tenant said that she had not served her original application for dispute resolution package (#A) and Notice of Hearing to the landlord within three days of having filed her application. The tenant said she was informed by staff at the RTB that she should file another application, which is the first listed application on this Decision.

As the tenant's applications are duplicates of each other and as the tenant did not serve the landlord her original application for dispute resolution, #A, I therefore dismiss that application and the hearing proceeded on #B.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, which includes her security deposit, and to recover the filing fee?

Background and Evidence

The tenant provided evidence that this tenancy began on April 1, 2012, ended on October 31, 2012, monthly rent was \$1250, and a security deposit of \$700 was paid by the tenant at the beginning of the tenancy.

The landlord disagreed and said that the tenancy ended on November 1, 2012, that the tenant paid a security deposit of \$625 and a pet damage deposit of \$75.

Both parties acknowledged that there was not as move-in or move-out inspection nor a condition inspection report for the beginning or the end of the tenancy.

The tenant's relevant documentary evidence included registered mail evidence concerning the tenant's written forwarding address and of the hearing package, and a copy of the cheque for the first month's rent and the balance of the security deposit.

The tenant testified that the landlord was provided the tenant's written forwarding address on October 31, 2012, during a final walk-through with the resident manager, ("M") delivered on a piece of paper. The tenant stated that the walk through was not an inspection and that she also delivered an alternative written forwarding address that date, that of her parents.

The tenant stated that the landlord has not returned her security deposit, despite sending another request via registered mail, and is seeking monetary compensation in that amount.

In response to my question, the landlord denied receiving the tenant's written forwarding address. I further asked the landlord, the manager of the corporate landlord, if M, the resident manager, had received the written forwarding address, as she was the one attending the rental unit on the last day of the tenancy. The landlord emphatically denied that anyone representing the landlord ever received the tenant's forwarding address, written or otherwise.

I then asked the landlord if M was available by telephone, and he said that she was at work. I asked for that work number, the landlord supplied M's work number. I dialed the number and was able to speak with M. I introduced myself and informed M that her boss and the tenant were presently in a dispute resolution hearing. I asked the landlord to say hello to M, and then cut off any further communication from the landlord, who attempted to speak with M.

I then asked M if she remembered the tenant, and M said yes. I then asked M if she remembered the final walk-through and she said yes. I then asked M if the tenant had given her new address to M on a piece of paper on the final day of the tenancy and she said yes. I then thanked M and she left the telephone conference call hearing.

Further, the landlord acknowledged that they have not returned the tenant's security deposit.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

Due to the direct contradiction of M as referenced here before, I find that the landlord was not being truthful when denied that he or anyone representing the landlord as their agent received the tenant's written forwarding address and I therefore find that any of his evidence lacked credibility.

I therefore accept the tenant's evidence and find that the landlord received the tenant's written forwarding address on October 31, 2012, due to the confirmation of the landlord's agent and that the last day of the tenancy was that same day. I also find that the landlord has not applied for dispute resolution claiming against the tenant's security deposit and has not returned any portion of the tenant's security deposit.

I therefore grant the tenant's application for dispute resolution. Also as the tenant has not expressly waived her entitlement to receive double the amount of her security deposit, I order that the landlord pay the tenant double her security deposit.

I therefore find that the tenant is entitled to a monetary award of \$1450, comprised of her security deposit of \$700, doubled to \$1400, and for recovery of the filing fee of \$50.00 due to the tenant's successful application, and is therefore entitled to a monetary order in that amount.

### Conclusion

I therefore grant the tenant a final, legally binding monetary order in the amount of \$1450, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The landlord is advised that costs of such enforcement may be recovered from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: June 07, 2013

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Residential Tenancy Branch