



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD and FF

### Introduction

This hearing was convened on the tenants' application of March 12, 2013 seeking a Monetary Order for return of their security and pet damage deposits in double under section 38(6) of the *Act* and recovery of their filing fee for this proceeding.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for return of all or a portion of their security and pet damage deposits and should the amount be doubled?

### Background and Evidence

This tenancy began on March 1, 2012 under a one year fixed term rental agreement set to end on February 28, 2013. Rent was \$1,725 per month and the landlord holds security and pet damage deposits of \$862.50 each, a total of \$1,725, paid on February 16, 2012.

The rental agreement includes a liquidated damages clause under which the tenants agree to pay \$1,725 in compensation for the landlord's administrative costs in finding new tenants in the event the tenants breached the fixed term agreement by leaving early, although the landlord claim \$966 as actual cost.

During the hearing, the landlord submitted into evidence a copy of the tenants' notice to end the tenancy dated November 16 , 2012 and setting an end of tenancy date of December 31, 2012, two months earlier than the end date set by the fixed term rental agreement.

The landlord also submitted a copy of the move-out condition inspection report signed by the female tenant on December 24, 2012 in the space with the notation, "I agree with the amounts noted above and authorize deduction of any Balance Due Landlord from my Security Deposit and/or Pet Damage Deposit." There is also place on the document where the tenants may sign if they do not agree with the proposed deductions.

The tenant stated that, at the time she signed the document, it showed a total owed to the landlord of \$1,166.

However, she noted that the copy submitted into evidence by the landlord had raised the total to \$1,297.40 by way of strikeouts and additions to the form. I note that the changes to the document have not been initialled by either party.

The tenant acknowledged that the landlord had returned \$427.60.

### Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them **unless the tenant has agreed otherwise in writing as per section 38(4).**

Section 38(6) of the *Act* states 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 deposits.

In the present matter, I find that the tenant gave consent to the landlord to retain \$1,166 from the deposits, and to that extent the landlord has complied with section 38(1) of the *Act*. However, I find that the landlord did not have consent and did not make application to retain the difference between the \$1,297.40 he retained and the \$1,166 for which consent was given, an unauthorized deduction of \$131.40.

Therefore, I find that the landlord must return the \$131.40 retained in breach of section 38(1) of the Act in double.

I further find that the tenants are entitled to recover their filing fee for this proceeding from the landlord.

Therefore, I find that the tenants are entitled to a Monetary Order calculated as follows:

Amount of deposits retained without consent	\$131.40
To double the amount retained without consent per s.38(6)	131.40
Filing fee	50.00
<b>TOTAL</b>	<b>\$312.80</b>

### Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$312.80**, enforceable through the Provincial Court of British Columbia, for service on 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*.

Dated: June 04, 2013

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Residential Tenancy Branch

