



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, O, FF

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, for the Landlord to comply with the Act, regulations or tenancy agreement, to recover the filing fee and for other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 16, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absences.

The Tenant said the Landlord did not accept the registered mail package with the Application and Notice of Hearing (the “hearing package”) because the post office returned it to the sender (the Tenant). The Tenant provided a tracking number and post office receipt and she said the address for the Landlord was correct.

The Tenant said at the start of the conference call that her son was actually the Tenant but she was named and signed on the tenancy agreement because she was paying the rent and the security deposit.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?
3. What other considerations are there?

### Background and Evidence

This tenancy started on November 15, 2012 as a month to month tenancy. The tenancy ended January 16, 2013. Rent was \$450.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$225.00 on November 13, 2012.

The Tenant said that her son moved out of the rental unit on January 16, 2013 due to a health issue. The said she gave the Landlord a forwarding address in writing on March 6, 2013. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that she cleaned the unit before leaving and she asked the Landlord for her security deposit back.

Further the Tenant said the Landlord did not return her post dated checks and the Landlord cashed the February, 2013 and March, 2013 cheques for rent payments. The Tenant said she is claiming the return of the February and March, 2013 rent payments in the amount of \$450.00 for each month for a total of \$900.00 as the tenancy ended January 16, 2013.

As well the Tenant said she is requesting double her security deposit returned as she was told to do so by the Residential Tenancy Branch representative that she spoke with in making the application.

The Tenant as so is claiming the mailing costs to serve the Landlord in the amount of \$10.23 and the filing fee of \$50.00 for this proceeding.

The Tenant said her total claim is \$1,410.23.

### Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on March 6, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by March 21, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$225.00 in the amount of  $\$225.00 \times 2 = \$450.00$ .

Further as the Tenant gave the Landlord notice that her son was moving out of the rental unit on January 12, 2013 pursuant to section 45 of the Act that notice would have an effective vacancy date of February 28, 2013. Section 45 says a tenant may give notice to end a periodic tenancy not earlier than one month and it must be prior to the day in the month the rent is due. Therefore in this situation notice to end the tenancy in January, 2013 would be effective for the end of February, 2013. Consequently I find the Tenant has established grounds for the return of the March, 2013 rent of \$450.00, but I dismiss the Tenant's claim for the February, 2013 rent as the February, 2013 rent is the Tenant's responsibility.

With regard to the mailing expenses, I find these costs are part of the hearing process not the tenancy therefore the mailing expenses are not illegible claims and as a result I dismiss the mailing costs of \$10.23.

As the Tenant was successful in this matter I also order the Tenant to recover the filing fee of \$50.00 from the Landlord; pursuant to section 67 a monetary order for \$950.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$450.00 the March, 2013 rent of \$450.00 and the filing fee of \$50.00.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$950.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: June 05, 2013

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Residential Tenancy Branch