



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD

### **Introduction**

This is the Tenant's application for compensation in the equivalent of double the amount of the security deposit.

The Tenant and her advocate gave affirmed testimony at the Hearing.

The Tenant's advocate testified that she mailed the Notice of Hearing documents to the Landlord at the Landlord's address, via registered mail, on September 6, 2013. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. The Tenant's advocate stated that the registered documents were returned unclaimed.

Based on the Tenant's advocate's affirmed testimony and the documentary evidence, I am satisfied that the Landlord was duly served with the Notice of Hearing documents by registered mail, pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing proceeded in her absence.

### **Issue to be Decided**

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

The Tenant gave the following testimony:

The Tenant stated that on October 26, 2011, the Tenant gave the Landlord a security deposit in the amount of \$500.00 and the first month's rent in the amount of \$1,000.00 for a tenancy that was to begin on November 1, 2011. The Tenant found accommodation that was more suitable to her for November 1, 2011, and gave the

Landlord written notice on October 29, 2011, that she would not be moving into the rental unit.

The Tenant testified that the Landlord gave the Tenant back the \$1,000.00 rent money, but did not return the security deposit. The Landlord told the Tenant that, since the Tenant received the security deposit from another party, the Tenant was lucky and that it was “free money”.

The Tenant testified that she provided the Landlord with her forwarding address, by registered mail sent May 4, 2012, to the Landlord’s address. The Tenant provided the registered mail receipt and tracking numbers in evidence. The Tenant testified that the documents did not come back.

The Tenant stated that the rental unit was the basement suite of a house, which had another suite upstairs. She stated that the upstairs occupant told her that the Landlord did not lose any money for November, 2001, rent because the occupant who was living in the basement suite did not move out. The Tenant provided a copy of a written statement from the upstairs occupant in evidence.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing (whichever date is the latter) a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I accept the Tenant’s undisputed testimony and documentary evidence that she provided the Landlord with her forwarding address in writing by registered mail sent May 4, 2012. Further to the provisions of Section 90 of the Act, I find that the Landlord received the Tenant’s forwarding address on May 9, 2012. For the purposes of calculating I find that the tenancy ended on November 1, 2011 and that the Landlord had until May 24, 2012 to return the security deposit or file an application against it.

I accept the Tenant’s undisputed testimony that the Landlord did not return the security deposit. The Landlord has not filed an Application for Dispute Resolution against the security deposit.

Section 38(6) of the Act provides 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 security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit (\$500.00 x 2 = **\$1,000.00**).

### **Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of **\$1,000.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 22, 2013

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Residential Tenancy Branch

