



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; MNSD; FF

### **Introduction**

This is the Tenant's application for a monetary order for double the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail, sent on July 23, 2013. It was also determined that the Landlord served the Tenant with copies of her documentary evidence.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?

### **Background and Evidence**

This tenancy began in July, 2010 and ended on June 30, 2013. The Tenant paid a security deposit in the amount of \$425.00 at the beginning of the tenancy. No Condition Inspection Report was completed by the parties at the beginning or the end of the tenancy.

The Tenant testified that she gave the Landlord her forwarding address in writing on June 30, 2013, at the "walk through". She stated that the Landlord told her she would be getting the security deposit back.

The Landlord stated that everything appeared clean at the "walk through", but that after the Tenant left, she found damage from the Tenant's dog, a broken door and window, slashes in the new linoleum, and a broken burner on the stove. The Landlord stated

that the cost to fix the damage was a little more than twice the amount of the security deposit.

The Tenant stated that she sent her forwarding address to the Landlord in a text message. She disputed that she did any damage to the rental unit.

### **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 shall last occur), 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.

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.

In this case, I find that the Tenant did not provide her forwarding address in writing to the Landlord. I do not consider a text message to qualify as "in writing". There is no provision in the Act for service of documents by text messaging. There is no signature, or reliable way of determining whether or not the recipient received the text. Therefore, I find that the Tenant is not entitled to compensation under Section 38(6) of the Act.

However, I find that the Landlord extinguished her right to claim against the security deposit under Sections 24(2) and 36(2) of the Act (failure to meet requirements for condition reports).

Therefore, I find that the Tenant is entitled to return of the security deposit.

The Tenant's application had merit and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlord retains the right to file an application for damages under Section 67 of the Act, if she so desires.

**Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$475.00** 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: November 04, 2013

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Residential Tenancy Branch

