

# **Dispute Resolution Services**

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Pacific Investments and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNSD

## Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

## Background and Evidence

The Tenant seeks a monetary claim of \$438.00. This consists of \$81.00 not returned by the Landlord and an additional \$357.00 for a penalty for not returning the complete amount. The Tenant states that the Landlord did not have permission to retain the \$81.00 from the security deposit. Both parties confirmed that the Tenant originally paid a \$357.00 security deposit.

The Tenant states that she completed the condition inspection report with the Landlord's Agent, D.D. on August 31, 2013 where there was only 1 notation of 1 hour of cleaning required. The Landlord's Agent, D.D. confirmed in his direct testimony that he provided this copy to the Tenant at the end of the inspection after she completed it by signing and providing her forwarding address in writing. The Landlord's Agent, D.D. states that he did not add anything to the "Security Deposit Statement" portion of the completed condition inspection report after the inspection. The Landlord's Agent, G.L.

also states that she did not add the additional deductions. The Tenant states that this is supported by the completed copy submitted by the Tenant and shown to be different from the copy provided by the Landlord noted as paid September 15, 2013.

#### <u>Analysis</u>

I accept the undisputed testimony of the Tenant which is supported by the direct testimony by the Landlord's Agent, D.D. and corroborated by the Landlord's Agent, G.L. The "Security Deposit Statement" portion of the condition inspection report was changed after the Tenant signed it allowing for only the deduction of 1 hour of cleaning. I find that the Landlord withheld the \$81.00 without permission of the Tenant. The Tenant has established a claim for the return of the \$81.00 from the original security deposit. I also find that the Landlord breached S.38 of the Residential Tenancy Act and is subject to S.38 (6).

38 (1) 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.

#### 6) 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.

The Tenant is also entitled to an additional \$357.00 for failing to comply with the Act. The Tenant has established a total monetary claim for \$438.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

#### **Conclusion**

The Tenant is granted a monetary order for \$438.00.

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 06, 2013

Residential Tenancy Branch