



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested return of double the balance of his security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord on September 6, 2013. The tenant provided copies of Canada Post receipts and tracking numbers for 2 hearing packages; 1 sent to the service address provided by the landlord on the tenancy agreement; a 2<sup>nd</sup> served to the landlord's residence.

The package sent to the service address given on the tenancy agreement was returned and marked by Canada Post as unclaimed. The package sent to the landlord's residence was accepted on September 9, 2013. The tenant provided copies of the Canada Post tracking information.

Pursuant to section 89 and 90 of the Act I find that the landlord was served twice; once when the mail was sent to the service address given by the landlord on the tenancy agreement and a 2<sup>nd</sup> time when registered mail was accepted by the landlord on September 9, 2013. In relation to the mail sent to the service address, a party cannot avoid service by refusing to claim registered mail; therefore I find that mail was deemed served on the 5<sup>th</sup> day after mailing; September 11, 2013.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the landlord did not appear at the hearing.

### Issue(s) to be Decided

Is the tenant entitled to return of the double the security deposit paid?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on January 1, 2013; it was fixed term to the end of June 2013. Rent was \$1,200.00 per month; a security deposit in the sum of \$1,000.00 was paid.

The tenant gave written notice he would vacate at the end of the fixed term.

A copy of the tenancy agreement and written notice were supplied as evidence.

Move in and move out inspection reports were not completed.

The tenant sent the landlord written agreement via text, that the landlord could retain \$79.35 for hydro costs, from the security deposit.

The tenant provided a copy of text messages sent on July 6, 2013; the tenant gave the landlord his forwarding address and at 10:48 the landlord responded, "you will end up owing me I am sure."

The tenant has not received the deposit.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages and no evidence that the landlord made any claim against the deposit within 15 days of July 6, 2013; the date I find he received the tenant's written forwarding address. The landlord acknowledged receipt of the address when he replied to the text message.

As the tenant had agreed in writing to a deduction from the deposit I find that the value of the deposit at the end of the tenancy was \$920.65.

Therefore, in the absence of an Order allowing the landlord to retain the deposit, I find pursuant to section 38(6) of the Act that the tenant is entitled to return of double the security deposit in the sum of \$1,841.30.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

I find that the tenant has established a monetary claim, in the amount of \$1,891.30, which is comprised of double the balance of the deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$1,891.30. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that the landlord requested payment of a security deposit that exceeded that allowed, in accordance with section 19(1) of the Act. Section 19(2) of the Act allows a tenant to deduct any deposit overpayment from rent owed; the tenant was not aware of this.

### Conclusion

The tenant is entitled to return of double the security deposit.

The tenant is entitled to filing fee costs.

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: December 12, 2013

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Residential Tenancy Branch

