



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of her security deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenant and landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

I have reviewed all written and oral evidence before me that met the requirements of the Dispute Resolution Rules of Procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order, which includes her security deposit, and to recover the filing fee?

### Background and Evidence

Neither party submitted documentary evidence; neither party could agree on the start or ending date of the tenancy. I note that the landlord was not the original landlord.

The submitted that the tenancy started a few years prior to the ending date of the tenancy, which she said was October 30, 2013, when she vacated.

The landlord submitted that the tenancy started in either June 2011 or 2012. The landlord submitted that the tenancy ended on November 4, 2013, the date of the move out inspection, as the tenant did not return the keys to the rental unit until that time.

There is no dispute that the tenant paid a security deposit of \$425 at the beginning of the tenancy.

The tenant gave evidence that she gave the landlord her written forwarding address on November 3, 2013, on the condition inspection report, the date of the final inspection.

The undisputed evidence also was that the landlord has returned \$150 of the tenant's security deposit prior to her filing for dispute resolution.

The tenant said that since she filed her application on November 25, 2013, she received another \$200 from the landlord.

The tenant is seeking monetary compensation of \$750, which is her security deposit of \$425, doubled, plus the filing fee of \$50, less the amount of \$150 previously received from the landlord, as of the day of her application.

The tenant submitted that there was no move-in condition inspection report and reaffirmed that she vacated the rental unit on October 30, 2013, and the keys were not returned to the landlord until the date of November 3, 2013, the date of the final inspection. The tenant submitted that the first date the landlord agreed to the inspection was November 3.

In response, the landlord agreed that the tenant provided her written forwarding address, but on November 4, 2013, when the final inspection was performed.

The landlord testified that they provided the tenant two separate cheques as a partial return of her security deposit, as mentioned by the tenant; however, the landlord disagreed that the second cheque in the amount of \$200 was sent after the tenant filed for dispute resolution as the cheque was printed on November 12.

In response to my question, the landlord could not confirm the date the second cheque was sent, but said that it would have been sent on the same day it was written.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit or pet damage deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of her security deposit has been extinguished in this case.

In the case before me, I accept that the tenancy ended on October 30, 2013, the date the tenant vacated the rental unit, that the landlord received the tenant's written forwarding address on November 3, 2013, and that the landlord has not applied for dispute resolution claiming against the security deposit. In contravention of the section 38 of the Act, the landlord made deductions from the tenant's security deposit before returning a portion.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant. Here the landlord submitted no evidence that they had authority to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit, and under section 38 I must order the landlord to pay the tenant double her security deposit.

I find that the tenant is entitled to a monetary award in the amount of \$550, comprised of her security deposit of \$425, doubled to \$850, and recovery of the filing fee of \$50 due to the tenant's successful application, less \$350 previously returned to the tenant.

### Conclusion

The tenant's application has been granted and she has been granted a monetary award in the amount of \$550.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$550, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The landlord is advised that costs of such enforcement are subject to recovery from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: March 14, 2014

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Residential Tenancy Branch

