



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF, O

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, to recover the filing fee and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on February 12, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absences.

The Tenant said the Landlord did not accept the registered mail package with the Application and Notice of Hearing (the “hearing package”) because the post office returned it to the sender (the Tenant). The Tenant provided a tracking number and post office receipt and he said the address for the Landlord was correct.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. What other considerations are there?

### Background and Evidence

This tenancy started on October 18, 2013 as a month to month tenancy. The tenancy ended December 31, 2013. Rent was \$950.00 per month payable in advance of the 31<sup>st</sup> day of each month. The Tenant paid a security deposit of \$475.00 on October 4, 2013. The Tenant said the Landlord returned \$238.10 of the security deposit to the Tenant after the Tenant requested the return of his security deposit. The Landlord made deductions for cleaning and damage to the rental unit of \$236.90. The Tenant said they left the rental unit clean and undamaged and the Tenant submitted photograph to support his claims.

The Tenant said that he moved out of the rental unit on December 31, 2013 and gave the Landlord a forwarding address in writing on January 6, 2014. The Tenant said there was no move in or move out condition reports completed although they requested the

Landlord to do the reports. The Tenant continued to say that they cleaned the unit before leaving and he asked the Landlord for her security deposit back.

The Tenant said he is only claiming the unpaid portion of the security deposit of \$236.90, the filing fee of \$50.00 and postage costs of \$8.80. The Tenant continued to say he understands the Act says that if a landlord does not return a tenant's security deposit within 15 days of the end of the tenancy and receiving the tenant's forwarding address the landlord is obligated to pay the tenant double the security deposit.

### Analysis

Section 23 and 35 of the Act says move in and move out condition inspection reports are required as defined by the regulation and if not completed section 24 and 36 explain the consequences.

Section 24 (2) of the Act says the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) **does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

Section 36 (2) of the Act says unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) **having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

As there were no condition inspection reports of the rental unit completed I find the Landlord claim against the Tenant's security deposit was extinguished and the Landlord had no claim to keep any part of the Tenant's security deposit.

Further I find:

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

I accept the Tenant's testimony that he gave the Landlord a forwarding address in writing on January 6, 2014. The Landlord did not repay the full security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by January 21, 2014. Consequently I find for the Tenant and grant an order for double the security deposit of \$475.00 in the amount of  $\$475.00 \times 2 = \$950.00$  less the amount of deposit returned of \$238.10 = \$711.90.

The Tenant has also applied for postage costs which are not an eligible claim as they are a business expense for preparation for the hearing not a tenancy expense. The postage claim of \$8.80 is dismissed.

As the Tenant has been partially successful in this matter, the Tenant is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for the balance owing as following:

Return of the balance of double the security deposit:	\$ 711.90
Recover filing fee	\$ 50.00
Subtotal:	\$ 761.90

### Conclusion

A Monetary Order in the amount of \$761.90 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 27, 2014

---

Residential Tenancy Branch

