



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

Tenant's application filed March 11, 2014: MNSD

Landlord's application filed June 16, 2014: MND; FF

### Introduction

This Hearing was scheduled to consider the **Tenant's application** for return of the security deposit.

At the outset of the Hearing, the Landlord's agent asked that the Landlord's application be heard as a cross application to the Tenant's application. The Landlord's agent did not know why the Landlord waited until June 16, 2014, to file his application. I explained to the parties that I did not have the Landlord's application in front of me, or the Landlord's evidence package, which was unavailable in the electronic filing system. The Tenant stated that she had only recently received the Landlord's evidence package. Therefore, I declined to hear the Landlord's application as a cross-application.

The Landlord's application was scheduled to be heard on October 21, 2014; however, **after a decision was reached on the Tenant's application, the parties came to a settlement agreement with respect to the Landlord's application.** Therefore, I have included both files in this Decision and recorded the settlement agreement with respect to the Landlord's file below.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with her Notice of Hearing documents and copies of her documentary evidence by registered mail sent on March 15, 2014.

### Issues to be Decided

- Is the Tenant entitled to a monetary award in the equivalent of double the security deposit pursuant to the provisions of Section 38 of the Act?

### Background and Evidence

This tenancy began on February 1, 2013, and ended on January 31, 2014. The Tenant

paid a security deposit in the amount of \$650.00 at the beginning of the tenancy.

A Condition Inspection Report was completed by both parties at the beginning of the tenancy. The parties agreed to meet for a move out inspection on January 31, 2014, at 6:00 p.m. The parties did a "walk through", but there was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the end of the tenancy. The Tenant did not agree that the Landlord could retain any of the security deposit.

The Tenant gave the Landlord her forwarding address on December 29, 2014, when she gave him her notice to end the tenancy.

The Landlord returned a portion of the Tenant's security deposit in the amount of \$425.00 on February 14, 2014. The Landlord kept \$225.00 for damages to the rental unit. The Tenant returned the Landlord's cheque in the amount of \$425.00 and reminded the Landlord that she did not agree that he could keep any of the security deposit for damages.

### **Analysis**

#### **Regarding the Tenant's Application:**

The 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 **written 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, 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.  
(emphasis added)

In other words, a landlord may not keep the security deposit without the Tenant's written permission or an Order of the Director allowing the Landlord to apply the security deposit towards damages or unpaid rent.

The Landlord's agent agreed that the Landlord received the Tenant's forwarding address on December 29, 2013. I find that the tenancy ended on January 31, 2014. Therefore, I find that the Landlord had until February 15, 2014 to either return the security deposit in full or file an application against it. The Landlord did not do either.

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. Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, pursuant to the provisions of Section 38(6) of the Act, in the amount of **\$1,300.00**. No interest has accrued on the security deposit.

**Settlement Agreement:**

At the conclusion of the Tenant's file, the parties reached a settlement agreement with respect to the Landlord's file which was scheduled to be heard October 21, 2014.

The Tenant agreed to pay, and the Landlord's agent agreed to accept, the total amount of **\$165.00** for cleaning at the end of the tenancy. The parties also agreed that this Decision and Settlement Agreement constitutes full and final settlement of any and all claims arising from this tenancy.

**Set-off:**

I hereby set off the Landlord's monetary order against the Tenant's monetary award and provide the Tenant with a Monetary Order in the amount of **\$1,135.00** for service upon the Landlord.

**Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,135.00** (\$1,200.00 - \$165.00) 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.

The Landlord's file, which was scheduled to be heard on October 21, 2014, is **cancelled.**

The parties have agreed that this Decision and Settlement Agreement constitutes **full and final settlement of any and all claims arising from this tenancy.**

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: June 30, 2014

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Residential Tenancy Branch

