



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This was an application by the tenant for a monetary order for the return of her security deposit. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend the hearing although he was served with the Application for Dispute Resolution and Notice of Hearing sent by registered mail on January 30, 2014. The postal records provided by the tenant showed that on February 2, 2014 the landlord refused to accept the documents from Canada Post and they were returned to the tenant.

Sections 89(1) & (2) of the Act provide that one of the ways in which an application for Dispute Resolution may be served on a landlord is by registered mail to the address where the landlord resides or carries on business as a landlord. Section 90 of the Act provides that a document served by mail in accordance with section 89 is deemed to be received on the 5<sup>th</sup> day after it is mailed. Refusal to accept a registered mail delivery is not a legitimate reason for a failure to attend a hearing; I find that the landlord is deemed to have been served with the application and notice of this hearing in accordance with section 90 of the *Residential Tenancy Act*.

### Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

### Background and Evidence

The rental unit is a cabin on the landlord's property on Vancouver Island. The tenancy began on March 1, 2013 on a month to month basis. Monthly rent was \$600.00 payable on first day of each month. The tenant paid a \$300.00 security deposit at the start of the tenancy.

The tenant moved out of the rental unit on June 1, 2013. She contacted the landlord approximately two weeks later to request the return of her security deposit. The landlord wrote down her new address and said that he would return the deposit right away. The tenant testified that the accommodation she moved into when she left the rental unit was an address and landlord that she was referred to by the respondent. The tenant

testified that she called the landlord several times after she gave him her forwarding address to ask when her deposit would be sent, although the landlord said he would send the deposit, he never did and then he stopped answering any of her phone calls. It was after the landlord refused to answer her phone calls that the tenant commenced this application for the return of her security deposit.

The landlord received the tenant's forwarding address in mid-June, 2013, but he did not return the security deposit and he did not file an application for dispute resolution to claim the deposit.

### Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with her forwarding address about two weeks after the tenancy ended and I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$600.00. I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

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 14, 2014

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Residential Tenancy Branch

