



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 24, 2014 by the Tenants to obtain a Monetary Order for the return of double their security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on June 1, 2006 and switched to a month to month after one year. The Tenants were required to pay rent on the first of each month in the amount of \$1,220.00, which was subsequently increased to \$1,225.00. On or before May 30, 2006 the Tenants paid \$495.00 as the security deposit. On December 27, 2013 the Tenants provided notice to end their tenancy effective January 31, 2014. The parties conducted a walk through inspection and completed condition inspection report forms at move in May 30, 2006 and at move out on January 29, 2014. The Tenants provided their forwarding address to the Landlord on December 27, 2013 and again on January 29, 2014.

The Tenants submitted evidence that the Landlord failed to return their security deposit and interest within the required 15 day period. They argued that the Landlord's cheque for \$511.48 (\$495.00 + \$16.48 interest) was not mailed until February 19, 2014 and they did not receive it until February 25, 2014; therefore they are seeking double the double amount.

The Landlord did not dispute that the security deposit refund was returned late. She stated that they will pay the doubling of the deposit if that is what is ordered.

In closing, the Tenants confirmed they have cashed the \$511.48 cheque.

### Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The undisputed evidence supports the tenancy ended January 29, 2014, and that the Tenants provided the Landlords with their forwarding address in writing on December 27, 2013 and again on January 29, 2014. The Landlord returned the deposit plus interest by mail on February 19, 2014 which the Tenants received February 25, 2014.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than February 13, 2014. The returned the deposit however it was returned late.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenants have met the burden of proof to establish their claim and I award them double his security deposit plus interest in the amount of **\$495.00** (2 x \$495.00 + \$16.48 interest LESS payment of \$511.48).

Conclusion

The Tenants have been awarded a Monetary Order for **\$495.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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: June 16, 2014

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Residential Tenancy Branch

