



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF, O

### Introduction

This matter dealt with an application by the Tenants for the return of double the security deposit, to recover the filing fee for this proceeding and other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 29, 2014. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlords and the Tenants in attendance.

### Issues(s) to be Decided

1. Are the Tenants entitled to the return of double the security deposit?
2. What other considerations are there?

### Background and Evidence

This tenancy originally started on April 1, 2010 in a one bedroom unit and then continued in a 2 bedroom unit starting February 1, 2011. Rent in the two bedroom unit was \$800.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant said he paid a security deposit of \$350.00 on March 19, 2010 when he moved into the one bedroom unit and another \$50.00 when he moved into the two bedroom unit. The Tenant said he had no evidence that he paid the additional \$50.00 towards the security deposit. The Landlord said the Tenant only paid the \$350.00 security deposit for the one bedroom and it was transferred to the two bedroom unit tenancy with no additional security deposit requested. The Landlord submitted the rental ledger to show no additional security deposit was collected for the two bedroom rental unit.

The Tenant said they moved out of the unit on March 14, 2014 not March 16, 2014 as the Landlord has indicated in their evidence. The Tenants continued to say that they cleaned the unit and signed the move out condition report that the unit was acceptable to the Landlord and themselves. The Tenants said the Landlord said the unit was in

good shape except but the stove needed cleaning. There was some discussion between the Landlord and the female occupant of the unit about 2 hours of cleaning at \$20.00 per hour but the Landlord did not discuss this with the male Tenant who is the only tenant named on the tenancy agreement. The male Tenant said the area called Security Deposit Statement on the move out condition inspection report was not filled in when he signed it. As a result the Tenants said they were surprised when they only received \$310.00 of their security deposit back. The Tenant said the Landlord retained \$40.00 for stove cleaning. The Tenant continued to say that this is not right and as a result they have made an application for double their security deposit of \$400.00 in the amount of  $2 \times \$400.00 = \$800.00$  less the amount of security deposit that was returned to them of \$310.00. The Tenant said they are applying for \$490.00 compensation and to recover their \$50.00 filing fee for a total of \$540.00.

The Landlord said that it was her mistake that the Security Deposit Statement was not signed when they completed the move out condition inspection report. The Landlord said the stove cleaning and the cost to clean the stove were agreed to by the female occupant. The Landlord agreed that she did not discuss the stove cleaning and cost with the male Tenant.

The Landlord continued to say that the Tenant was not required to pay any additional security deposit when they moved into the two bedroom unit so the only security deposit paid was the original deposit of \$350.00 paid on March 19, 2010. The Landlord said they have submitted the security deposit receipt and the rental ledger as proof.

The Tenant called his witness which was his father. The Witness said he came to assist the Tenant move to a new town and the move was on March 14, 2014 not March 16, 2014 as indicated by the Landlord. As well the Witness said the rental unit appeared to be clean and he did not hear anything about the stove or the Landlord retaining any part of the security deposit.

Both parties were given the opportunity to question the Witness and both parties had no questions. The Witness was thanked and excused from the hearing.

The Landlord said in closing that the security deposit was only \$350.00 and the Tenant was unhappy about paying the full rent for March, 2014.

The Tenant said in closing that they had been good long term tenants and they were unhappy about how the Landlord has treated them. The Tenant continued to say that the stove was clean except for grime between the glass on the door which was due to age not their cleaning. The Tenant said they are requesting double their security deposit \$800.00 less the \$310.00 returned to them in the amount of \$490.00 and to recover the \$50.00 filing fee.

Analysis

There was contradictory testimony provided by the Landlord and Tenant and it appeared that there are issues between the parties. The Tenant said the security deposit was \$400.00 and the Landlord said the security deposit is \$350.00. The Tenant had no corroborative evidence to prove the security deposit was \$400.00. The Landlord submitted a copy of a receipt for \$350.00 indicated it was for a security deposit paid by the Tenant in cash on March 19, 2010 and a copy of the rental ledger for the Tenant's account, which does not show any additional payments for a security deposit. Based on the evidence submitted I find the security deposit is \$350.00.

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 find that the Tenants did give the Landlords a forwarding address in writing on March 14, 2014 on the move out condition inspection report. The Landlord did not repay **all** the 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. The Tenant did not agree in writing for the Landlord to retain any part of the security deposit. The Landlord only returned \$310.00 of the Tenant's \$350.00 security deposit on April 3, 2014. Consequently I find for the Tenants and I award the Tenants double the security deposit of \$350.00 in the amount of  $\$350.00 \times 2 = \$700.00$  less the amount of security deposit returned \$310.00 for a total of \$390.00.

As the Tenants were successful in this matter I further order the Tenants to recover the filing fee of \$50.00 from the Landlords. Pursuant to section 38 and 72 a monetary order for \$440.00 will be issued to the Tenants. This Monetary order represents double the security deposit less the returned portion of the security deposit plus the filing fee:

	Double the security deposit	\$700.00
	Filing fee	\$ 50.00
	Subtotal	\$750.00
Less	Security deposit returned	\$ 310.00
	Balance owing to the Tenants	\$440.00

### Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 38 and 72 of the Act, I grant a Monetary Order for \$440.00 to the Tenants. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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: August 27, 2014

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Residential Tenancy Branch

