



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on August 11, 2014, to obtain a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee for their application.

The hearing was conducted via teleconference and was attended by the Tenant who gave affirmed testimony. The Tenant testified that he served the Landlord with copies of his application, notice of hearing documents, and his first package of evidence by registered mail on August 11, 2014. Canada Post tracking information was provided in the Tenant's evidence and he confirmed that the Canada Post website indicated that the Landlord signed for the registered mail on August 12, 2014.

The Tenant confirmed receipt of the Landlord's evidence submission which was the same as the evidence received from the Landlord on file. The Tenant stated that he sent a second package of evidence on January 12, 2015, in response to the Landlord's submission.

Based on the above, I find the Landlord was sufficiently served notice of this proceeding and I continued in absence of the Landlord.

### Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

### Background and Evidence

The undisputed evidence was that the Tenant entered into a one year fixed term tenancy that began on January 1, 2009 and switched to a month to month tenancy after December 31, 2009. Initially rent of \$1,300.00 was due on or before the first of each month and was later increased to approximately \$1,550.00 per month. On December 15, 2008, the Tenant paid \$650.00 as the security deposit. On May 15, 2014 the Tenant sent the Landlord written notice to end their tenancy effective June 30, 2014, which included his forwarding address. The registered mail was signed received by the Landlord on May 20, 2014.

The Tenant testified that they vacated the property prior to the end June 2014, and they returned to clean the rental unit. He argued that despite providing his forwarding address to the Landlord in his May 15, 2014 notice to end tenancy the Landlord has not returned his security deposit and he now seeks double his security deposit.

The Landlord submitted documentary evidence which alleged that there may have been damage caused to the rental property; however, no one appeared at the teleconference hearing on behalf of the Landlord to present the merits of those allegations.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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*.

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.

The tenancy ended June 30, 2014, and the Landlord received the Tenant's forwarding address on May 20, 2014. Therefore, the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 15, 2014; the Landlord did neither.

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 deposit and the landlord **must** pay the tenant double the security deposit. [My emphasis added].

Based on the above, I find that the Tenant has succeeded in proving the merits of their claim, and I award them double their security deposit plus interest. Accordingly, I grant the Tenant a monetary award in the amount of **\$1,300.45** (2 x \$650.00 + \$0.45 interest).

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

### Conclusion

The Tenant has been awarded a Monetary Order for **\$1,350.45** (\$1,300.45 + \$50.00). 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: February 18, 2015

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Residential Tenancy Branch

