



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for a return of her security deposit and for recovery of the filing fee paid for this application.

The tenant's agent (hereafter "tenant") attended the telephone conference call hearing; the landlord did not attend.

The tenant provided evidence that they served the landlord with their application for dispute resolution and notice of hearing personally by courier service on September 5, 2014 and their amended application by courier service on September 9, 2014. The tenant submitted copies of the receipts and delivery information for both services.

Based upon the submissions of the tenant, I find the landlord was sufficiently served notice of this hearing and of the tenant's application and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order comprised of her security deposit and to recovery of the filing fee paid for this application?

### Background and Evidence

The tenant submitted that this tenancy was to begin on September 15, 2014, that monthly rent was to be \$1395.00, and that the tenant paid a security deposit of \$700.00 on or about July 3, 2014.

The tenant submitted further that she viewed the rental unit in July and originally was to move in on August 15, 2014; however, the parties signed a tenancy agreement with an official start date of September 15, 2014. According to the tenant, when calling to confirm the dates, the landlord stated that the September 15, 2014, start date would not work after all, as she intended to have friends stay in the rental unit at that time. After that, the landlord refused to respond to the calls of the tenant, and the tenant emailed the landlord that she was not now moving into the rental unit.

The tenant submitted that she provided her notice that they were not moving into the rental unit and their forwarding address to the landlord in a written letter sent via courier service and email on August 14, 2014, and that despite her request, the landlord has failed to return her security deposit.

The tenant additionally submitted a copy of the August 14, 2014, letter sent to the landlord, proof of the email transfer of the \$700.00 security deposit to the landlord's account, and email communication between the parties.

The tenant's monetary claim is \$700.00 and the filing fee of \$50.00.

### Analysis

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to return a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit and pet damage deposit.

The undisputed evidence shows that the tenancy was to start on September 15, 2014, but never started at all, and the tenant sent her written forwarding address and a request for a refund of her security deposit to the landlord on August 14, 2014 via courier service.

I have no evidence before me that the landlord has either filed an application to retain the tenant's security deposit or returned the deposit in full.

I therefore grant the tenant's application for a return of her security deposit. Although the tenant did not request that the security deposit be doubled, she did not specifically waive her right to receive double and under section 38(6), I must order that the landlord pay the tenant double her security deposit of \$700.00.

Pursuant to section 72(1) of the Act, I also order that the landlord pay the tenant her filing fee for this application in the amount of \$50.00.

Due to the above, I find the tenant is entitled to a total monetary award of \$1450.00, comprised of her security deposit of \$700.00, doubled to \$1400.00 and the filing fee of \$50.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of her monetary award of \$1450.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

#### Conclusion

The tenant's application for monetary compensation is granted.

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: March 27, 2015

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Residential Tenancy Branch

