



# 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 pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00a.m. The tenant attended the hearing, with an assistant and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was served by registered mail on February 25, 2014. The tenant provided a receipt and Canada Post tracking information with respect to this mailing. She testified that the landlord lived above her rental suite and remains at that address. She sent her registered mailing to this address. Based on the sworn testimony of the tenant and pursuant to section 89 and 90 of the *Act*, I find that the landlord has been served the tenant's dispute resolution hearing package on March 1, 2015, 5 days after its registered mailing.

### Issue to be Decided

Is the tenant entitled to return of all or a portion of her security deposit?

Is the tenant entitled to the filing fee for this application?

### Background and Evidence

The tenant testified that this tenancy began on April 1, 2014. She testified that the landlord continues to hold a security deposit in the amount of \$350.00 paid by her on March 26, 2014. She testified, with assistance, that the tenancy was intended to be brief as the landlord wanted to move family into the rental unit in July 2014. From April 1, 2014 to June 30, 2014, the tenant testified that she paid the rental amount of \$700.00 on the first of each month. She testified that, at the end of the tenancy, she walked through the rental unit with the landlord. She testified that he was not satisfied by the state of the rental unit but that he did not prepare a condition inspection report and he did not ask the tenant to retain her security deposit. The tenant testified that no agreement was made with respect to retention of the security deposit with the landlord.

On the date of move-out, June 30, 2014, the tenant provided the keys to the rental unit and her forwarding address. Her witness testified that he had prepared the letter with the forwarding address and was present when the tenant provided it to the landlord.

The tenant testified that she sent the landlord a request for return of her security deposit by registered mail on December 10, 2014. She provided receipts of this mailing as well as tracking information. She provided a response letter sent by the landlord on December 17, 2014 with her documentary materials. That letter indicated the landlord would not return her security deposit.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the evidence is that the tenant personally handed a forwarding address in writing to the landlord on her move-out date, June 30, 2014. The landlord had 15 days after June 30,

2014, the date when the forwarding address was deemed served to the landlord, to take one of the actions outlined above. The landlord has not taken either action. The landlord has not attended this hearing to dispute the tenant's application.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant testified that she did not provide the landlord with any written or other authorization at the end of this tenancy to retain any portion of her security deposit. Section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the evidence at this hearing and, on a balance of probabilities, I find that the landlord has neither made a claim against the security deposit nor returned the security deposit. I accept the submissions of the tenant that there was no agreement or authorization for the landlord to retain the security deposit. I therefore find that the tenant is entitled to a monetary award including \$350.00, the amount of her security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

The tenant sought an order doubling her deposit in the circumstances. The tenant gave sworn testimony that she has not waived her rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section

38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable for this period. I find the tenant is entitled to a monetary award in an amount equal to double the value of her security deposit, \$700.00.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

The tenant is entitled to a monetary order in the amount of \$750.00 as follows;

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$350.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	350.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$750.00</b>

The tenant is provided with formal Orders in the above terms. Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 26, 2015

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Residential Tenancy Branch

