



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on September 12, 2014, to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Tenant and her daughter, who each provided affirmed testimony. The Tenant testified that the Landlord was served notice of this application and this hearing by registered mail on January 13, 2015. Canada Post tracking information was submitted by the Landlord and confirmed that the package had been successfully delivered to the Landlord on January 15, 2015. Based on the submissions of the Tenant I find that the Landlord was sufficiently served notice of this proceeding in accordance with section 89 of the *Act*, and I continued in the Landlord's absence.

### Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation?

### Background and Evidence

The Tenant submitted evidence that on August 11, 2014, she viewed the Landlord's rental unit and paid the Landlord \$650.00 damage deposit. The Landlord signed a piece of paper to acknowledge receipt of the deposit and also provided the Tenant with his drivers' license number.

The Tenant had arranged to have her family view the property on August 12, 2014. If her family was in agreement with the location and house, they would proceed with the tenancy that was to begin on August 31, 2014 for \$1,300.00 per month rent. The Tenant stated that on August 13, 2014 she informed the Landlord's wife that after her children saw the house on August 12, 2014, they had decided they did not want to proceed with the tenancy and requested her damage deposit be returned. When the Landlord refused to return her deposit, the Tenant said she personally delivered a copy of the August 14,

2014 letter provided in evidence, to the Landlord's home. She said that she saw the Landlord looking out of his window and he refused to answer the door. Then the Landlord's son, who was 18 or 19, came outside and she handed him the letter requesting her security deposit back which also listed her forwarding address.

The Tenant stated that she had a friend call the Landlord on August 19, 2014 to inquire about the rental unit and they were told the unit had been rented. Then they drove by the rental unit and saw people moving into it.

### Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by their documentary evidence.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, I find that on August 11, 2014, the parties consented, had capacity, and compensation was paid to the Landlord when the Tenant paid \$650.00 as a security deposit. Those actions formed a verbal tenancy agreement that is recognized and enforceable under the *Residential Tenancy Act*. The terms of that verbal tenancy agreement were that the tenancy was scheduled to begin on August 31, 2014, for the monthly rent of \$1,300.00, and the Tenant was required to pay a security deposit of \$650.00, which she paid on August 11, 2014.

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Therefore, as the Tenant cancelled the tenancy prior to moving in, I find the Landlord was still required to manage the Tenant's security deposit in accordance 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.

On August 14, 2014, the Tenant served the Landlord written notice to end the tenancy which included the Tenant's forwarding address. Therefore, the Landlord was required

to return the Tenants' security deposit in full or file for dispute resolution no later than August 29, 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.

As per the foregoing, I conclude that the Tenant has succeeded in proving the merits of their claim, and I award them double their security deposit plus interest in the amount of **\$1,300.00** (2 x \$650.00 + \$0.00 interest).

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

### Conclusion

The Tenant has been awarded a Monetary Order for **\$1,350.00** (\$1,300.00 + \$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: April 09, 2015

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Residential Tenancy Branch

