



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that on October 18, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The Landlord submitted no evidence in regards to these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

### Background and Evidence

The Landlord stated that this tenancy ended on September 01, 2014 and the Tenant stated that it ended on August 15, 2014.

The Tenant and the Landlord agree that:

- a security deposit of \$700.00 was paid;
- the Landlord did not complete a condition inspection report at the start or the end of the tenancy;
- the Tenant provided a forwarding address to the Landlord, in writing, on July 11, 2014 when she provided the Landlord with written notice of her intent to vacate the rental unit;

- the Tenant did not authorize the Landlord, in writing, to retain the security deposit;
- in a text message the Landlord's sister, who was acting on behalf of the Landlord, informed the Tenant that \$200.00 will be deducted from the security deposit;
- in a text message the Landlord's sister informed the Tenant that she will leave the remaining \$500.00 of the security deposit in an envelope under a plant on the patio;
- in a text message the Tenant informed the Landlord's sister that she did not locate the envelope; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit nor did he have authority from the Residential Tenancy Branch to retain any portion of the deposit.

The Tenant stated that she no portion of her security deposit has been refunded. The Landlord stated that the only attempt to return the security deposit was the cash his sister allegedly left under a plant on the patio.

### Analysis

Section 38(4(a) of the *Act* authorizes a landlord to keep all or part of a security deposit if, at the end of the tenancy, the tenant agrees, in writing, that the landlord can keep a portion of the deposit. The evidence shows that the Landlord's sister informed the Tenant that the Landlord was retaining \$200.00 of the deposit, however there is no evidence before me that shows the Tenant agreed to that deduction, in writing. I therefore find that the Landlord did not have authority to keep any portion of the deposit pursuant to section 38(4)(a) of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

Regardless of whether this tenancy ended on August 15, 2014 or September 01, 2014, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received by the Landlord, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

Section 38(8) of the *Act* stipulates that a security deposit must be returned personally to tl

Tenant or via a service method described in section 88 (c), (d) or (f) of the *Act*. Leaving the refund under a pot on a patio is not a service method authorized by the *Act*. When a landlord opts to refund a security deposit in a manner that is not authorized by the *Act*, the landlord bears the burden of establishing the refund was received.

I find that the Landlord has failed to establish that the Tenant received any portion of her security deposit. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that she did not locate the \$500.00 in cash that was allegedly left. I find it entirely possible that the payment was removed by a third party. I cannot, therefore, conclude that any portion of the \$700.00 deposit has been returned.

### Conclusion

The Tenant has established a monetary claim of \$1,450.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: May 07, 2015

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Residential Tenancy Branch

