



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNSD FF

### Preliminary Issues

Upon review of the Tenants' application for dispute resolution the Tenants wrote the following in the details of the dispute:

*landlord has not returned the security deposit and has sent a cheque in someone elses name. I would like to go for double.*

[Reproduced as written]

Based on the aforementioned I find the Tenants had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking double their security deposit. Therefore, I amend the Tenants' application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on January 20, 2015, 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 both Tenants. No one appeared on behalf of the Landlord. The Tenants submitted documentary evidence that the Landlord was served notice of this application and this hearing by registered mail on January 23, 2015. Canada Post tracking information confirms that the Landlord signed receipt of the registered mail on January 26, 2015.

Based on the above, I find the Landlord was properly served notice of this proceeding in accordance with section 89 of the Act. Therefore, I proceeded in absence of the Landlord.

### Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

### Background and Evidence

The undisputed evidence was that the Tenants entered into a written month to month tenancy agreement that began on July 1, 2014. Rent of \$1,000.00 was payable on or before the first of each month and on July 1, 2014 the Tenants paid \$500.00 as the security deposit. The Tenants vacated the property on November 1, 2014 and in early December 2014 the Tenants provided the Landlord with their forwarding address, in writing.

The Tenants read text messages into evidence where on December 5, 2014 they wrote asking about the return of their deposit and the Landlord replied stating that a money order had been mailed 2 days prior.

The Tenants submitted documentary evidence which included a copy of an envelope listing the Landlord's return address and the Tenant C.C. first name with a different last name. Inside the envelope was a money order for \$400.00 payable to a different person and a list indicating the Landlord deducted \$100.00 off of their security deposit. The Tenants asserted that the Landlord wrote a different name on the envelope on purpose to delay in the return of their security deposit.

The Tenants argued that they never gave the Landlord written permission to without any portion of their deposit and there was nothing wrong with the rental unit when they moved out.

### Analysis

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

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 undisputed evidence was this tenancy ended November 1, 2014, and the Landlord received the Tenants' forwarding address during the first week of December 2014. The evidence further confirms that the Landlord had the Tenants' forwarding address as she mailed them a money order that was payable to someone else and was postmarked on December 3, 2014.

Based on the foregoing, the Landlord was required to return to the Tenants', not some other named person, their full security deposit or file for dispute resolution no later than December 17, 2014.

Based on the above, I accept the Tenants submission find that the Landlord purposely 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.

Based on the above, I find that the Tenants have succeeded in proving the merits of their claim, and I award them double their security deposit plus interest in the amount of **\$1,000.00** (2 X \$500.00 + \$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 Tenants have succeeded with her application; therefore, I award recovery of the **\$50.00** filing fee.

### Conclusion

The Tenants have succeeded with their application and have been awarded the return of double their security deposit plus the recovery of their filing fee for the total award of \$1,050.00.

The Tenants have been issued a Monetary Order in the amount of **\$1,050.00** (\$1,000.00 + \$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: July 30, 2015

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Residential Tenancy Branch

