



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNSD, FF

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("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 and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. I note that the listed landlord, "JB", was not present, but that "KB" appeared for the landlord. The landlord's evidence showed that KB was also a landlord for this tenancy and I accept that she had full authority to represent and participate as a landlord. I, however, have not amended the tenant's application to reflect KB as an additional landlord.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their 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 return of her security deposit and to recovery of the filing fee paid for this application?

### Background and Evidence

The evidence showed that this tenancy began on July 1, 2012, ended on December 28, 2014, monthly rent was \$1100.00, and the tenant paid a security deposit of \$550.00 at the beginning of the tenancy.

In support of her application, the tenant submitted that she provided her written forwarding address to the landlord by registered mail on January 13, 2015, and that the landlord did not return the full security deposit, having received \$450.00 from the landlord. The tenant submitted further that she did not cash the landlord's cheque for her partial security deposit.

The tenant submitted that there was no move-in or move-out condition inspection report.

The landlord acknowledged receiving the tenant's written forwarding address as stated by the tenant, and that there has not an application for dispute resolution filed by the landlord. The landlord submitted that they were entitled to keep a portion of the tenant's security deposit due to cleaning and cleaning products they deemed necessary after the tenancy ended.

The landlord submitted that, as to an inspection report, there was a breakdown of an inspection report. The document was not provided into evidence.

The landlord submitted further that she has placed a stop payment on the cheque previously sent to the tenant.

### Analysis

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either 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 and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of her security deposit has been extinguished in this case, as I find that the landlord failed to provide any evidence that there was a move-in or move-out condition inspection report. I was not provided clear evidence of what the form of a breakdown of a condition inspection report.

In the case before me, the undisputed evidence shows that the tenancy ended on December 28, 2014, that the landlord received the tenant's written forwarding address shortly after it was mailed on January 13, 2015, and that the landlord has not applied for dispute resolution claiming against the security deposit. In contravention of the Act, the landlord made a deduction from the tenant's security deposit before returning a portion.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant. Here the landlord submitted no evidence that they had authority to keep any portion of the security deposit. Therefore, I find that the landlord had no right to retain any portion of the tenant's

security deposit, and under section 38(6) I must order the landlord to pay the tenant double her security deposit, as the tenant did not specifically waive her right to receive double her security deposit.

I therefore grant the tenant's application for dispute resolution and, pursuant to section 62(3) of the Act, order that the landlord pay the tenant double her security deposit of \$550.00.

I also approve the tenant's request for recovery of her filing fee of \$50.00.

Due to the above, I grant the tenant a total monetary award of \$1150.00, comprised of her security deposit of \$550.00, doubled to \$1100.00, 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 \$1150.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order 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 requesting a return of her security deposit, which was doubled by operation of the Act, 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: August 11, 2015

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Residential Tenancy Branch

