



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNSD O FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on July 3, 2015. The Tenant filed seeking a Monetary Order for the return of his security deposit, for other reasons, 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. No one was in attendance on behalf of the Landlord.

The Tenant provided affirmed testimony that the Landlord was served notice of this application and this hearing by registered mail on July 08, 2015. The Landlord provided the Canada Post tracking information.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the undisputed evidence of the Tenant, I find that the Landlord was sufficiently served notice of this hearing in accordance with Section 89(1) (c) of the Act. As such, I continued to hear the undisputed evidence of the Tenant.

### Issue(s) to be Decided

Has the Tenant met the burden to proof entitlement to a Monetary Order?

### Background and Evidence

The Tenant testified that he responded to an internet advertisement to rent a shared basement suite with another tenant. He submitted that the Landlord resided in the upper level of the house and the area he agreed to rent was separate from the Landlord's living space.

The Tenant submitted that he verbally agreed to rent the shared basement suite and on January 24, 2015 he sent the Landlord \$287.50 via electronic money transfer as payment for the security deposit. He had agreed that rent was to be paid in the amount of \$575.00 per month.

The Tenant stated that on January 29, 2015 he sent the Landlord a text message telling him that he would not be moving into the rental unit. Then on February 3, 2015 he sent the Landlord a letter via registered mail requesting the return of his security deposit. That letter also informed the Landlord that he could return the deposit via e-transfer or to his forwarding address as listed in the letter. The Canada Post tracking information was provided in the Tenant's testimony and is recorded on the front page of this Decision.

### Analysis

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

**Section 7** of the Act provides, in part, as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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.

Upon consideration of 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 version of events as discussed by the Tenant. Therefore, based on the Tenant's submissions, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

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.

I accept that this tenancy ended based on the Tenant's abandonment of the unit when he informed the Landlord on January 29, 2015 that he would not be moving into the unit, pursuant to section 44(1)(d) of the *Act*. I find that the Landlord was provided the Tenant's forwarding address in writing on February 8, 2015, five days after the Tenant's letter was mailed pursuant to section 90 of the *Act*.

Based on the above, I find that the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than February 23, 2015. The Landlord did neither.

Therefore, I find the Landlord 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 and pet deposit and the landlord must pay the tenant double the security deposit.

As per the foregoing, I find that the Tenant has succeeded in proving their application for the return of double their security deposit plus interest in the amount of **\$575.00** (2 x \$287.50 + \$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 was successful with their application and was awarded the monetary compensation of **\$625.00** (\$575.00 + \$50.00).

The Tenant has been issued a Monetary Order for **\$625.00**. 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 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: December 17, 2015

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Residential Tenancy Branch

