



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, OLC, 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, a monetary Order for money owed or compensation for damage or loss, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that on June 26, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to Landlord, via registered mail. He stated that he is unable to find his Canada Post receipt for this mail so he is unable to provide a tracking number for the package.

The Landlord was not present at the start of the hearing. The Tenant contacted the Landlord by telephone and provided him with the numbers needed to join the teleconference. The Landlord joined the teleconference shortly thereafter.

The Landlord stated that he did not dial into the teleconference at the scheduled start time as he had forgotten the date of the hearing and he did not have the hearing documents with him. He stated that he recalls receiving written notice there would be a hearing relating to the security deposit, although he believes that was provided to him by the Residential Tenancy Branch.

As the Landlord acknowledged receiving notice that there would be a dispute resolution proceeding, I accept the Tenant's evidence that the Application for Dispute Resolution and the Notice of Hearing were served to the Landlord. In reaching this conclusion I was heavily influenced by the fact that the Residential Tenancy Branch does not serve hearing documents on behalf of applicants, so the documents must have been served by the Tenant.

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.

Neither party submitted documentary evidence in regards to this matter.

### Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

### Background and Evidence

The Tenant and the Landlord agree that:

- the tenancy began on September 01, 2014;
- a security deposit of \$240.00 was paid;
- the tenancy ended on April 30, 2015;
- the Tenant did not authorize the Landlord to retain the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that on two occasions in May of 2015 he provided his forwarding address to the Landlord, via email. The Landlord stated that he did not receive the Tenant's forwarding address by email.

The Tenant stated that on May 28, 2015 he mailed his forwarding address to the Landlord. The Landlord acknowledged receiving the forwarding address in the mail in June or July of 2015.

The Landlord and the Tenant agree that:

- the Landlord mailed the Tenant a cheque for \$100.00;
- the cheque represented a partial refund of his security deposit; and
- the Tenant returned the cheque to the Landlord.

The Landlord stated that the cheque was mailed to the Tenant in May or June of 2015. The Tenant stated that he received the cheque sometime near the beginning of July of 2015.

Neither party was permitted to give evidence regarding the condition of the rental unit at the end of the tenancy, as that issue is not relevant to the claim that the Landlord did not comply with section 38(1) of the *Act*. The Landlord was repeatedly advised that he has the right to file an Application for Dispute Resolution claiming for compensation for damage to the rental unit.

### Analysis

On the basis of the undisputed evidence, I find that this tenancy ended on April 30, 2015 and that the Landlord had received the Tenant's forwarding address, in the mail, by July 31, 2015.

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.

On the basis of the undisputed evidence 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, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 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.

I find that the Tenant's Application for Dispute resolution has merit and that he is entitled to recover the cost of filing this Application.

### Conclusion

The Tenant has established a monetary claim of \$530.00, 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 award does not reflect the \$100.00 cheque that was issued to the Tenant by the Landlord, as that cheque has been returned to the Landlord.

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 01, 2015

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Residential Tenancy Branch

