



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application (made July 14, 2015): MND

Tenant's application (made November 26, 2015): MNSD, MNDC; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damage to a screen in the amount of \$40.00.

The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with her Notice of Hearing documents by registered mail sent December 2, 2015. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. The Tenant testified that the registered documents were returned to her "refused".

Refusal to accept registered documents does not affect the service provisions of the Act. I find that the Landlord was duly served with the Tenant's Notice of Hearing documents pursuant to the provisions of Section 89 of the Act. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the documents.

The Landlord did not sign into the conference and therefore, her Application was dismissed without leave to reapply.

Despite being duly served, the Landlord did not sign into the teleconference and the Hearing continued with respect to the Tenant's Application. The teleconference remained open for 20 minutes.

### **Issues to be Decided**

1. Is the Tenant entitled to a monetary award for double the amount of the security deposit?

### **Background and Evidence**

The Tenant gave the following undisputed testimony:

The Tenant paid a security deposit in the amount of \$400.00 on February 23, 2015. The tenancy ended on July 1, 2015. The Tenant provided her forwarding address in writing on July 1, 2015.

The Landlord did not perform a Condition Inspection Report that complies with the requirements of the Act and regulations at the end of the tenancy.

At the end of the tenancy, the Landlord required the Tenant to pay \$40.00 for a damaged screen, to which the Tenant initially did not agree; however, the Tenant sent the Landlord a cheque for \$40.00 on November 4, 2015. The Landlord has not returned any of the security deposit to the Tenant.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides 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.

Section 38(5) of the Act provides that the right of a landlord to retain all or part of a security deposit or pet damage deposit does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

In this case, the Landlord applied against the security deposit within 15 days of receipt of the Tenant's forwarding address; however, I find that the Landlord's right to claim against the security deposit was extinguished. Therefore, I find that the Landlord had no right to claim against the security deposit and the Tenant is entitled to compensation under Section 38(6) of the Act because the Landlord did not return the security deposit within 15 days.

I find that the Tenant has established a monetary award in the total amount of **\$800.00**.

The Tenant has been successful in her Application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$850.00** for service upon the Landlord. This Order may be filed in the Provincial Court 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: January 11, 2016

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Residential Tenancy Branch

