



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, OLC, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested return of double the security deposit, less a sum previously returned, an Order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent on August 20, 2015 to each landlord via registered mail to the address noted on the Application. A Canada Post tracking number, receipt and tracking information was provided as evidence of service to each landlord. The mail was sent to the same address used to provide the landlord with notice ending the tenancy and the return address on the envelope used by the landlord to return a portion of the security deposit.

The Canada Post tracking information indicated that on August 27, 2015 each landlord refused the mail and on September 1, 2015 the mail was returned to the tenants.

Refusal to accept registered mail does not allow a party to avoid service. In accordance with section 90 of the Act, I find that each landlord is deemed to have received the registered mail on the 5<sup>th</sup> day after mailing; August 25, 2015. These documents were served in accordance with section 89 of the Act; however neither landlord attended the hearing.

### Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit less a sum previously received?

### Background and Evidence

The tenancy commenced in mid-April 2013, rent was \$2,450.00 per month. A security deposit in the sum of \$1,225.00 was paid. A move-in condition inspection report was not completed.

The tenants gave notice to end the tenancy effective July 15, 2015. A copy of the June 15, 2015 notice, supplied as evidence, provided the tenant's forwarding address where the deposit could be returned. The tenants vacated on July 6, 2015. The tenants contacted the landlord to arrange a move-out inspection which was completed on July 9, 2015. The tenants had hired professional cleaners and the landlord said the unit was in good condition. The only item pointed out by the landlord during the inspection was the shower door glass; which the tenant cleaned again.

Shortly after the tenants vacated they received a cheque in the sum of \$1,025.00. The landlord included an August 1, 2015 note in which the landlord said they had deducted \$200.00 from the deposit for yard work, incomplete house cleaning and garbage removal that the city would not pick up. The tenant had not signed any document agreeing to deductions from the deposit. A copy of the August 1, 2015 note was supplied as evidence. After the tenants received the deposit, less the \$200.00 the tenants sent the landlord a message requesting the balance of the deposit be returned; the landlord did not respond.

The tenants have claimed return of double the security deposit less the \$1,025.00 returned by the landlord.

The tenants supplied copies of the cleaning invoice, carpet cleaning invoice, their notice ending tenancy and correspondence sent to the landlord via email.

### Analysis

Based on unopposed testimony I find, pursuant to section 44(f) of the Act, that the tenancy ended effective July 15, 2015.

The Act requires a landlord to complete a move-in and move-out inspection report. If the landlord fails to schedule a move-in inspection report, section 24 of the Act is applied, extinguishing the landlord's right to claim against the deposit for damage to the property. This means that at the end of the tenancy, once a forwarding address is given to the landlord, the deposit must be returned within 15 days. In this case the landlord could only retain the deposit while waiting for a hearing if the claim was for a loss, outside of damage to the rental unit.

The landlord was given the tenants' forwarding address as part of the June 15, 2015 notice to end tenancy. Once the tenancy ended on July 15, 2015 the landlord had 15 days to either claim against the deposit, or to return the deposit, in full, to the tenants.

Since the tenants did not sign, agreeing to a deduction at the end of the tenancy the landlord had no right to make any deduction from the security deposit.

Section 38 of the act provides, in part:

**38 (1)** *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

*(a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing,*

***the landlord must do one of the following:***

***(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;***

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...*

(Emphasis added)

Section 38 (6) of the Act provides:

***(6) If a landlord does not comply with subsection (1), the landlord***

***(a) may not make a claim against the security deposit or any pet damage deposit, and***

***(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.***

(Emphasis added)

Therefore, as the landlord had extinguished the right to claim against the deposit for damage to the rental unit and had not obtained written authorization to make a deduction from the deposit I find, pursuant to section 38(6) of the Act that the tenants are entitled to return of double the \$1,225.00 security deposit; less \$1,025.00; the sum previously returned to the tenants.

As the tenants' application has merit I find that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$1,475.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to return of double the \$1,225.00 security deposit; less \$1,025.00 previously returned.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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 27, 2016

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Residential Tenancy Branch

