



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, AAT, OLC, PSF, RPP, FF

### Introduction

This was a hearing with respect to the tenant's application for the return of his security deposit and for other relief. The hearing was conducted by conference call. It was originally scheduled for hearing on December 8, 2015, but it was adjourned to be heard by conference call on February 11, 2016 for the reasons set out in an interim decision dated December 21, 2015. The tenant called in and participated in the reconvened hearing. The landlord attended with his legal counsel and the landlord's witness also called in to the hearing.

In the application for dispute resolution the tenant requested additional remedies, including access to the rental property, the return of personal property, and order for the provision of services or facilities and an order that the landlord comply with the Act Regulation or Tenancy agreement. The tenancy has ended and the tenant has not advanced any claims with respect to matters other than the claim for a monetary award and the return of the security deposit, therefore these other claims are dismissed without leave to reapply.

### Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit, including double the amount?  
Is the tenant entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is a residence in West Vancouver. The tenancy began on March 1, 2014 for a two year fixed term, with monthly rent of \$3,500.00 payable on the first of each month. The tenant paid a security deposit of \$1,750.00 in February, 2014.

The tenancy ended on September 30, 2015 by mutual agreement. According to the tenant no condition inspection was conducted either at the beginning of the tenancy or when it ended. The tenant testified that he provided the landlord with his forwarding address and requested the return of his security deposit by email prior to the end of the tenancy. At the hearing the landlord acknowledged that he exchanged emails with the tenant regarding the security deposit and that he received the tenant's request for the deposit and his forwarding address before the tenancy ended. The Tenant said the landlord offered to return a lesser amount to the tenant. The landlord denied that he offered to any amount to the tenant.

The landlord submitted late evidence sent on February 10, 2015. The evidence was intended to support a claim by the landlord to keep the deposit and advance a further monetary claim. The evidence was not received by me before the hearing and the tenant did not have the evidence. I told the landlord at the hearing that his evidence was submitted late and would not be considered on this application.

### Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with his forwarding address in writing based upon the acknowledgement of the landlord at the hearing.

The policy guideline with respect to security deposits and set offs provides in part as follows:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
  - if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

The landlord did not have the tenant's written permission to retain the deposit and the tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act*; the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$3,500.00. With respect to the tenant's claim for additional compensation for expenses to move or to dispose of items said to be improperly delivered to him by the landlord, the tenant has not provided any documents or receipts to establish the claim and it is therefore dismissed without leave to reapply. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$3,550.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

The landlord has stated his intention to bring a monetary claim against the tenant for compensation for damages and repairs to the rental property. The landlord is free to pursue his own monetary claim, but that does not affect or delay the enforceability of the monetary order granted to the tenant in his proceeding.

#### Conclusion

The tenant has been granted a monetary award in the amount stated. All other claims are dismissed without leave to reapply.

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: February 11, 2016

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Residential Tenancy Branch

