



# 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 convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order that the Landlord comply with the Act, a Monetary Order for return of double the security deposit, and recovery of the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

1. Is the Tenant entitled to a monetary Order for return of double the security deposit?
2. Should the Tenant recover her filing fee?

### Background and Evidence

The Tenant testified as to the terms of the tenancy. A copy of the residential tenancy agreement was also provided tenancy August 1, 2014. Monthly rent was payable in the amount of \$760.00 and the Tenant paid a security deposit of \$380.00 at the start of the tenancy began.

The Tenant vacated the premises on August 15, 2015. She testified that she provided the Landlord with written notice of the forwarding address to return her security deposit to by text message on September 1, 2015. She confirmed that on September 6, 2015 the Landlord sent her a letter to her forwarding address on September 6, 2015. That letter was introduced in evidence.

The Tenant testified that the Landlord did not perform an incoming or outgoing condition inspection report in accordance with the Act.

The Landlord confirmed that he received the Tenant's forwarding address by text message; further he stated that he sent the letter introduced in evidence to that address. The Landlord confirmed that while he did do a walk through with the Tenant, he did not perform the condition inspection reports as required. The Landlord further confirmed that he failed to return the Tenant's security deposit or make an application for dispute resolution within 15 days of receiving the Tenant's forwarding address.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act. I doing so, the Landlord has also breached section 38 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as the written agreement of the Tenant an Order from an Arbitrator. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$810.00**, comprised of double the security deposit ( $\$380.00 \times 2 = \$760.00$ ) and the \$50.00 fee for filing this Application.

The Tenant is given a formal Monetary Order in the above terms and must serve the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed and enforced in the Small Claims Division of the B.C. Provincial Court.

The Landlord introduced evidence of the condition of the rental unit. The Landlord is not able to make a monetary claim through the Tenant's application. If the Landlord wishes to obtain monetary compensation from the Tenant he may do so by filing his own Application for Dispute Resolution in accordance with the *Residential Tenancy Rules of Procedure*.

#### Conclusion

The Tenant is entitled to return of double her security deposit and recovery of the filing fee for a total of **\$810.00**.

Dated: March 07, 2016

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Residential Tenancy Branch

