



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought 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 the filing fee?

### Background and Evidence

The Tenant testified that this four month fixed term tenancy began March 1 of 2015 to June 30, 2015. The monthly rent was \$1,450.00 per month and the Tenant paid \$1,000.00 as a security deposit.

The Tenant stated that he vacated the premises on June 15, 2015. The Tenant testified that he provided the Landlord with his forwarding address by email on June 19, 2015.

The Tenant confirmed that during the tenancy he used email money transfers to send his rent, and as such, in his June 19, 2015 email, he requested that the security deposit be returned by either mail, or by email money transfer. Introduced in evidence was a copy of this email.

The Tenant testified that the Landlord did not perform an incoming or outgoing condition inspection report as requested by the *Residential Tenancy Act* and the regulations.

The Tenant stated that at some point after August 26, 2015 he received, by mail to his forwarding address, a cheque from the Landlord dated August 23, 2015 in the amount of \$385.12. The Tenant confirmed that he cashed this cheque.

The Tenant further testified that he did not agree to the deductions to his security deposit. The Tenant also stated that to his knowledge the Landlord did not make an application for dispute resolution.

The Tenant sought return of double the security deposit paid in addition to recovery of the filing fee.

The Landlord confirmed the rent was \$1,450.00 per month. She also confirmed the Tenant paid \$1,000.00 as a security deposit and furniture deposit.

The Landlord testified that she reduced the Tenant's security deposit by \$385.88 for cleaning, as well as \$129.00 for carpet cleaning, and \$100.00 for her time to load and unload the dishwasher and remove garbage. The Landlord confirmed that she returned to the Tenant the amount of \$385.12.

The Landlord stated that the Tenant agreed to the above deductions by way of email exchange on or about June 9, 2015. She stated that she sent this evidence in to the Branch, "some time the week before" the hearing. That evidence was not before me.

The Landlord stated that her mother passed away in mid-June and as a result she was not in British Columbia at the time the Tenant moved from the rental unit and as such was not able to deal with the security deposit in a timely manner.

In reply to the Landlord's submissions, the Tenant stated that he did not agree to the deductions the Landlord made to his security deposit. He further testified that he took considerable care to clean the rental unit when he vacated and made sure it was left in at least the condition it was when he received it.

### Analysis

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

While the Landlord claimed to have the Tenant's consent to deductions to his security deposit, the Tenant denied this was the case. Aside from the Landlord's allegations, which were disputed by the Tenant, there was no documentary evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

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.

The Landlord also failed to perform condition inspections as required by the Act and the regulations. By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished her right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act. In doing so, the Landlord has breached section 38 of the Act.

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 \$2,000.00, comprised of double the security deposit (\$1,000.00). As the Tenant has received the sum of \$385.12, he is entitled to a further \$1,614.88. Additionally, as the Tenant's application had merit, I award him the \$50.00 fee for filing this Application for a total of **\$1,664.88**.

The Tenant is given a formal Monetary Order for **\$1,664.88** and must serve a copy of the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Landlord failed to conduct move in and move out condition inspection reports as required by the Act. The Landlord also failed to make an application for dispute

resolution or return the Tenant's security deposit within 15 days of receipt of his forwarding address in writing. The Tenant is entitled to return of double the security deposit (\$1,000.00) in addition to the filing fee. As the Landlord returned the sum of \$385.12, the Tenant is entitled to a Monetary Order for the balance of **\$1,664.88**.

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: March 09, 2016

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Residential Tenancy Branch

