



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

The tenant applied for return of all or a portion of her security deposit pursuant to section 38, an amount equal to her security deposit as the landlord contravened the *Act* in failing to return the deposit and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing although the teleconference scheduled for 1:30 pm continued until 1:47pm. The tenant and her assistant attended and were allowed to make submissions with respect to the application.

The tenant testified and submitted supporting documentary evidence that she served the Application for Dispute Resolution package (including the Notice of Hearing) to the landlord on September 11, 2015 by registered mail. She submitted a receipt from Canada Post and tracking information to show that the package had been received by the landlord. The tenant also provided tracking information to show that subsequent packages were received by the landlord. She testified that the two subsequent packages were; the evidence package sent on ... and the amendment information sent on ... I find that the landlord was sufficiently served with the tenant's Application for Dispute Resolution on September 16, 2015, 5 days after its registered mailing; that the landlord was sufficiently served with the tenant's evidence package on ... ; and that the landlord was sufficiently served with the tenant's amended application with new address on ...

### Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?

Is the tenant entitled to an amount equivalent to her security deposit for the landlord's contravention of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This month to month tenancy began on March 1, 2015. The tenant submitted a copy of the residential tenancy agreement and addendum. The tenant also submitted a copy of her first rent payment (\$850.00 payable on the first of each month) and payment of her security deposit (\$425.00 paid on March 1, 2015). The tenant testified that the landlord continues to hold her security deposit and she applied for its return.

The tenant testified that, on July 25, 2015, she provided the landlord with written notice that she intended to vacate the rental unit at the end of August 2015. She testified that she had a medical condition that required her to relocate. She testified that she made arrangements with the landlord to keep her furniture, that she packed her smaller belongings and vacated the rental unit on August 10, 2015. The tenant testified that she paid the full amount of rent (\$850.00) for the month of August 2015.

The tenant testified that she made arrangements with the landlord to conduct a move-out condition inspection on August 10, 2015. The tenant testified that she confirmed her meeting at the rental unit with the landlord ahead of time and waited to meet with the landlord on August 10, 2015. She testified that the landlord did not attend. Further, she testified that she made several attempts to telephone the landlord on August 10, 2015 and received no response.

The tenant testified that, when she vacated the rental unit on August 10, 2015, she put the keys under the landlord's apartment door with a note attached to say she had left more information in the rental unit. The tenant testified that she placed a note on the rental unit kitchen table. The tenant submitted a photograph of three post-it notes, together on the kitchen table. The note dated August 10, 2015 stated,

*I was waiting for you to do the check out today @ 4 pm. As is already 6pm, I had to leave because we have a very long drive back home... I cleaned the house and left the furniture as per our agreement... looking forward to receive the deposit back to the following address [address provided]...*

The tenant submitted a copy of the move-in condition inspection report. However, the move-out inspection portion was left blank.

## Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord was informed of the forwarding address in writing on August 10, 2015. The landlord was provided with a subsequent address on January 11, 2016. I find that the landlord had 15 days after August 10, 2015 to take one of the actions outlined above. I note that the landlord took no action after being provided with a second address in January 2016.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security (and/or pet damage) deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant testified that she did not agree to allow the landlord to retain any portion of her security deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of her deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of her security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposit nor did she did not attend the hearing to dispute the tenant's application to recover her deposit. I find there is sufficient proof that the landlord was deemed served in accordance with the *Act*. Given the testimony and the supporting documentary evidence submitted by the tenant, I find that the tenant is entitled to a monetary order including \$425.00 for the return of the full amount of her security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*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;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed, sworn evidence of the tenant before me, I find that the landlord has neither successfully applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn, oral testimony that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of her security deposit with any interest calculated on the original amount only. No interest is payable for this period.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in favour of the tenant as follows:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$425.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	425.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$900.00</b>

The tenant is provided with formal Orders in the above terms. Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 15, 2016

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Residential Tenancy Branch

