



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of double the security deposit; less a sum previously returned.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The parties agreed that the application should be amended to remove the caretakers name as a respondent. The landlord present at hearing is the owner of the building.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid less a sum previously returned?

### Background and Evidence

The tenancy commenced on July 15, 2015. Rent was due on the first day of each month. The tenant paid a security deposit in the sum of \$375.00.

The tenant said that he did complete a move-in condition inspection with the caretaker but he was not given a copy of the report.

The tenancy ended effective June 30, 2015. The tenant gave notice to end the tenancy and after two changes of date made by the landlord, a move-out inspection was completed on June 27, 2015.

The tenant said that the caretaker did not allow him to sign the move-out condition inspection report and told him the report was for the landlord only; he was not given a copy of the report. The tenant did not agree to any deductions from the deposit.

On July 6, 2015 the tenant received a cheque in the sum of \$115.00; deductions had been made from the deposit.

The landlord said that the caretaker was unable to attend this hearing. A February 12, 2016 letter signed by the caretaker was supplied as evidence. The caretaker states that the tenant did not pay full rent for the last month of the tenancy and that the unit needed cleaning. The tenant gave the caretaker the keys and a forwarding address.

The landlord said that he did not have a copy of the inspection report before him but that the tenant did not meet with the caretaker at the end of the tenancy. The tenant gave the caretaker the key and left. The landlord confirmed that they had the forwarding address on June 27, 2015.

The landlord acknowledged that deductions were made from the deposit without the tenants' written agreement.

The tenant responded that he did meet with the caretaker at the end of the tenancy. The caretaker looked in cupboards, the fridge and stove. The tenant said he never used the oven; he left the unit spotless.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the tenant did attend the move-in condition inspection and move-out inspections. On the balance of probabilities and in the absence of the person who acted as agent for the landlord, I have accepted the tenants' testimony as the most reliable. The tenant gave details on the items he and the caretaker examined at the move-out inspection. The letter issued by the caretaker did not mention an inspection. If the tenant did not attend the inspection, as stated by the landlord, the landlord could have supported that submission by bringing forward a copy of the notice of inspection given to the tenant. There was no evidence before me supporting the landlords' testimony that an inspection had been scheduled, in accordance with section 35 of the Act. If an inspection had been scheduled I would expect to see some evidence of that request made by

the landlord.

I find that the landlord received the tenants' written forwarding address on June 27, 2015; the date of the move-pout condition inspection. The landlord chose to make deductions from the deposit, contrary to section 38(4) of the Act and did not submit a claim against the deposit.

Therefore, as the landlord failed to either return the security deposit, in full, or make an application claiming against the deposit within 15 days of June 30, 2015, I find pursuant to section 38(6) of the Act that the tenant is entitled to return of double the \$375.00 deposit, less \$115.00 previously returned.

Based on these determinations I grant the tenant a monetary Order in the sum of \$635.00. 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 tenant is entitled to return of double the \$375.00 security deposit, less \$115.00 previously returned.

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: March 31, 2016

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Residential Tenancy Branch