



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was an application by the tenant for a monetary order for the return of her security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant and the landlords called in and participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

### Background and Evidence

The rental unit is a residence on Bowen Island. The tenancy began on May 1, 2014 for a one year fixed term and thereafter month to month. Monthly rent was \$1,600.00 payable on first day of each month. The tenant paid a security deposit of \$800.00 on April 5, 2014.

The tenant gave notice to the landlord and moved out of the rental unit on July 31, 2015. The tenant left the keys for the landlord and requested the return of her security deposit by e-mail. The tenant also sent the landlord a letter dated September 4, 2015 advising the landlords of her forwarding address.

The landlords did not return the security deposit and they did not file an application for dispute resolution to claim the deposit. The landlords testified at the hearing that they communicated with the tenant about cleaning and repairs to the rental unit that were required and they said they were waiting for bills for cleaning to be sent before they returned the balance of the tenant's deposit. The landlords attempted to return a portion of the tenant's deposit, first by bank transfer and later by cheque. The tenant refused to accept the transfer of money. She testified that she received a cheque from

the landlords in the amount of \$160.79. The tenant received the cheque but did not cash it.

The landlords testified that they were communicating with the tenant and waiting to complete cleaning and repairs before returning the balance of the tenant's security deposit. The landlords view is that the tenant has used her knowledge of the security deposit rules to take advantage of the landlords by making this application for double the amount of her security deposit after leaving the rental unit in an unacceptable condition at the end of the tenancy.

### 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 landlords with her forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenant served the landlords with documents notifying the landlord of this application as required by the *Act*. The tenant did not consent to any deductions from her security deposit.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$1,600.00, being double the amount of the deposit as required by the *Residential Tenancy Act*. The tenant is entitled to recover the \$50.00 filing fee for her application for a total award of \$1,650.00. This order may be registered in the Small Claims Court and enforced as an order of that Court.

As discussed at the hearing, the landlords intend to proceed with a monetary claim against the tenant for their costs for cleaning and repairs. The landlords are free to pursue their claim against the tenant, but the commencement of such a claim does not

affect their obligation to satisfy the monetary award in favour of the tenant which is immediately enforceable.

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: April 08, 2016

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Residential Tenancy Branch