



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VICTORIA EXECUTIVE RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the pet deposit and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on January 19, 2016. Canada Post tracking numbers were provided by the tenant in evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Residential Tenancy Act (Act)*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. The tenant was permitted to provide additional evidence after the hearing had concluded. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Preliminary issues

The tenant requested permission to amend her application to include the doubling provision of the security deposit and the pet deposit and to amend the total amount of

the claim to \$3,750.00. I have allowed this amendment pursuant to rule 4.2 and rule 4.5 of the Rules of Procedure as the landlord should be aware of s. 38 of the *Act* regarding their obligations with regard to the security and pet deposits.

#### Issue(s) to be Decided

- Is the tenant entitled to recovery the doubling provision of the security deposit?
- Is the tenant entitled to recover double the pet deposit?

#### Background and Evidence

The tenant testified that her tenancy started on June 01, 2015 for a fixed term of six months. The tenant vacated the rental unit on October 31, 2015. Rent for this unit was \$2,500.00 per month due on the 1st of each month. The tenant paid a security deposit of \$1,250.00 on or about May 18, 2015 and a pet deposit of \$1,250.00 on June 01, 2015.

The tenant testified that she gave the landlord her forwarding address by email on October 30, 2015 when she also informed the landlord about leaving the keys to the unit. The tenant referred to email correspondence between the landlord and tenant in which the landlord had said a cheque had been sent on November 03, 2015 but this cheque did not arrive and the landlord then sent the security deposit by e-transfer on December 07, 2015. The tenant testified that therefore the landlord acknowledged receipt of the tenant's forwarding address when they stated they had returned the security deposit to that address.

The tenant testified that the landlord informed the tenant that her pet deposit was a non-refundable deposit due to this being a high end rental and that the landlord was entitled to keep the pet deposit for any wear and tear caused by the pet. The landlord sent the

tenant documentation concerning this; however, this information was regarding rentals in Alberta and not British Columbia.

The tenant testified that as the security deposit was not returned within 15 days after the end of the tenancy the tenant now seeks to recover the doubling provision as allowed under the *Act* of \$1,250.00. The tenant also seeks to recover double the pet deposits as the landlord is not entitled to retain this deposit in accordance with the *Act* of \$2,500.00.

The tenant testified that she did not give the landlord written permission to keep all or part of the pet deposit. Further to this the landlord did not complete a move in or a move out condition inspection report at the start or end of the tenancy.

#### Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's undisputed evidence before me.

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of one or all of the tenants to keep all or part of the security or pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and 35(3) of the *Act*.

Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security or pet deposit for damages is extinguished.

When a landlord's right to claim against the security and pet deposit for damages has been extinguished the landlord must return the security and pet deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the undisputed evidence presented I find that the landlord did receive the tenant's forwarding address by email on October 30, 2015. While email is not normally a recognized method of providing a forwarding address in writing it is clear the landlord received this address as they acknowledge this address by sending a cheque to the tenant on November 03, 2015 even though this cheque did not arrive. The landlord did not provide any evidence to show that the cheque was actually sent prior to November 15, 2015. As a result, the landlord actually had until November 15, 2015 to return all of the tenant's security and pet deposits. The landlord did return the security deposit of \$1,250.00 on December 07, 2015 by e-transfer; however, as this was not returned within the allowable 15 days or by November 15, 2015 then the tenant is entitled to recover the doubling provision as allowed under the *Act* of **\$1,250.00**.

With regard to the tenant's application to recover the pet deposit; when a rental unit is in British Columbia then the landlord is governed by the legislation of this province and not of another province. The tenant testified the information provided to her by the landlord concerning this was from Alberta and not British Columbia. Even if the landlord has a clause in a tenancy agreement which states that a pet deposit is non-refundable if this clause is contrary to the *Act* it is considered to be an unconscionable term and therefore not enforceable. Consequently, the landlord must deal with the pet deposit in accordance to the *Residential Tenancy Act* of British Columbia.

The tenant has therefore established a claim for the return of the pet deposit. As the pet deposit was not returned within 15 days or by November 15, 2015 the pet deposit has

also been doubled to an amount of **\$2,500.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security or pet deposit for the term of the tenancy.

As the tenant's claim has merit I find the tenant may recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant pursuant to s. 38(6)(b) and s. 67 of the *Act* for the following amount:

Doubled amount of security deposit	\$1,250.00
Double the pet deposit	\$2,500.00
Filing fee	\$100.00
Total amount due to the tenant	\$3,850.00

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$3,850.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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: August 29, 2016

---

Residential Tenancy Branch

