



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for damage pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order against the tenants?

Is the landlord entitled to retain all or a portion of the tenants' security deposit or is the tenant entitled to the return of all or a portion of the tenants' security deposit?

Is the landlord entitled to the recovery of his filing fee for this application?

### Background and Evidence

This tenancy began June 2007. The rental amount of \$875.00 was payable on the first of each month. The landlord continues to hold a portion of the \$437.50 security deposit paid by the tenant at the outset of the tenancy. The tenant vacated the rental unit on November 30, 2015.

The landlord provided evidence that a condition inspection was done at the start of the tenancy. He testified that he provided opportunities to the tenant to attend a condition inspection at the end of the tenancy but the tenant did not attend. He did not submit a

condition inspection report for the end of tenancy stating he did not know that he needed to complete a report when the tenant did not attend. The landlord submitted photographic evidence to illustrate the condition of the rental unit when the tenant vacated the residence. The photographs showed; items in a storage locker (left behind); dirty appliances (including stove); missing/broken hinge on a cabinet; hole in the hardwood floor; damage to the drywall; burnt-out light bulbs; missing light covers; and small hole in bath, closet and bedroom doors.

The tenant provided testified, with supporting documentation that she provided her forwarding address to the landlord on December 2, 2015. The landlord testified that, because of the holidays, he did not receive this notice until approximately December 17, 2015. Thereafter, the landlord mailed a cheque in the amount of \$132.93 to the tenant on July 2016. The landlord claims that he incurred \$307.57 in damages. With the return of a portion of the tenant's security deposit, the landlord included a breakdown of his costs;

- \$120.00 in door repairs as a result of holes;
- \$75.00 fob replacement;
- \$6.57 light bulb replacement;
- \$11.00 cabinet hinge replacement; and
- \$42.00 light shade replacement.

The landlord did not submit receipts or invoices related to the repairs and replacements required at the rental unit at the end of the tenancy. He testified that he was familiar with the costs as he is an expert in this area. The landlord testified he has his own construction company: he repaired the damage himself.

The tenant applied to recover her security deposit on January 21, 2016. The landlord applied to claim the damages listed above, as well as for the return of his filing fee on December 23, 2015.

### 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 deposit, 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 December 2, 2015. The landlord had 15 days after December 2, 2015 to take one of the actions outlined above: he made an application to retain the security deposit on December 23, 2015.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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 deposits, section 38(4)(a) of the *Act* does not apply to the tenant's security or pet damage deposit.

The tenant seeks return of her security deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenant's deposit, he did so after the timeline to do so had passed. Given that the landlord did not make his application within the required timeline, I dismiss the landlord's application to retain all or a portion of the tenant's filing fee and I find that the tenant is entitled to a monetary order including \$437.50 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 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 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*. 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 (totaling \$10.47).

### Conclusion

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

Item	Amount
Return of Security Deposit (\$437.50 + \$10.47 interest = \$950.00)	\$447.97
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	437.50
Amount Returned by Landlord to Tenant	-132.93
<b>Total Monetary Order</b>	<b>\$752.54</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: August 12, 2016

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Residential Tenancy Branch