



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

### Issue(s) to be Decided

Is the tenant entitled to obtain a return of his security deposit?  
Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

This month to month tenancy began on July 1, 2013 and had a rental amount of \$1200.00 payable on the first of each month. The tenant vacated the rental unit on December 31, 2015. On that date, the tenant provided undisputed sworn testimony that he gave his forwarding address, in writing to the landlord. The parties agreed that the landlord continues to hold the tenant's \$600.00 security deposit paid at the outset of the tenancy. The tenant sought the return of his security deposit.

The landlord/manager testified that he conducted a move-out inspection with the tenant. He testified that he identified no issues at that time but that it was dark. He noted that it was dark on the condition inspection report and testified that both parties agreed he

would contact the tenants if he discovered anything substantial in the light of day. The landlord/manager agreed that he received the tenant's forwarding address at that time.

The landlord/manager testified that, on returning on a previous day during the daytime, he discovered further damage to the rental unit including a stove that had not been cleaned and a need for the floor to be cleaned behind the fridge and stove in the rental unit. As well, he indicated that there was mold on the window tracks and the interior of the windows had not been cleaned. He testified that he tried to contact the tenants but they never returned to do further clean-up.

The landlord/owner submitted a note indicating that the 'extra work' done in the rental unit would total \$250.00 - \$200.00 for labour and \$50.00 for materials. Based on that information, the landlord attempted to return a portion of the tenant's security deposit by cheque. The tenant testified that he did not accept the partial refund and did not use the cheque.

Both landlords testified that the tenants were invited back on January 2, 2016 however the tenants did not agree with this testimony. The landlord made the application to retain the tenant's security deposit on January 22, 2016.

### 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 and pet damage 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 and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*). With respect to the return of the security and pet damage 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 by December 31, 2015 at the time of the condition inspection – the address was provided in writing at that time. Therefore, the landlord had 15 days after December 31, 2015 to take one of the actions outlined above.

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 he did

not agree to allow the landlord to retain any portion of his 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 his deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of his security deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenant's deposit, he did not do so within the allowable time period. Given that the landlord has not made his application within the allowable timeframe, I find that the tenant is entitled to a monetary order including \$600.00 for the return of the full amount of his 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 he 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 his 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 \$100.00 filing fee paid for this application.

Conclusion

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

Item	Amount
Return of Security Deposit	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1300.00</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: September 13, 2016

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Residential Tenancy Branch