



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### 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 his 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 tenant entitled to the return of his security deposit?

### Background and Evidence

This tenancy began on October 6, 2014 and continued for a 12 month fixed term. The \$895.00 rental amount was payable on the first of each month. The tenant vacated the rental unit with the mutual agreement of the landlord on July 29, 2015. At that time, the tenant provided his forwarding address to the landlord. The tenant claimed for the return of double the amount of his security deposit claiming that the landlord did not return the security deposit in the manner required by the Residential Tenancy Act.

The landlord testified that she returned the tenant's \$447.50 security deposit to the tenant on August 19, 2015. She testified that the landlord's head office is in a different province and therefore the preparation of the cheque to the tenant took longer than if it were provided in this province. The landlord testified that the time it took for the cheque to be sent and received by the tenant was beyond her control and that she sent the materials to request the return of the security deposit as quickly as possible.

### 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 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 plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security (section 38(6) of the *Act*).

With respect to the return of the security, 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 the tenant in person and in writing on July 29, 2015. She submitted that the end of the lease date was July 31, 2015. If the landlord's end of tenancy date is considered accurate, the landlord had 15 days after July 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 both his security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposit. I note that, as of the date of this hearing, the landlord has returned the tenant's \$447.50 security deposit but that the landlord returned the tenant's deposit 19 days after the triggering event to do so.

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 all of the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security in full within the required 15 days. The tenant gave sworn testimony that he has not waived his 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 equivalent to the value of his security deposit with any interest calculated on the original amount only. No interest is payable for this period.

### Conclusion

I issue a monetary Order in favour of the tenant in the amount of \$447.50 as an award for the landlord's failure to comply with section 38 of the *Act*.

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: October 3, 2016

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Residential Tenancy Branch

