



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail, although she cannot recall the date of service. The female Landlord stated that although the packages were improperly addressed, they were received sometime in June of 2016. As the Landlords acknowledge receiving these packages, they were accepted as evidence for these proceedings.

On November 16, 2016 the Landlords submitted 45 pages of evidence and one CD to the Residential Tenancy Branch. The female Landlord stated that this evidence was mailed to the Tenant on November 10, 2016. The female Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### **Preliminary Matter**

Neither party was permitted to testify regarding the condition of the rental unit at the end of the tenancy as the Landlords have not claimed for compensation for damage to the unit. The parties were advised that the Landlords retain the right to file an Application for Dispute Resolution claiming compensation for damage to the rental unit.

### **Issue(s) to be Decided:**

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlords and the Tenant agree that:

- the Tenants were living in the rental unit prior to the Landlords purchasing the property in January of 2016;
- on January 29, 2016 the Tenants and the Landlords completed a condition inspection report;
- on the condition inspection report that was completed on January 29, 2016 the Tenants agreed that they would replace a broken post at the main gate;
- the Tenants did not replace the broken post;
- the tenancy ended on May 01, 2016;
- a partial forwarding address for the Tenants was written on the condition inspection report that was completed on May 01, 2016;
- the Landlords understood that the partial forwarding address provided by the Tenants was in the same community as the rental unit;
- the Landlords did not return any portion of the security deposit; and
- the Landlords did not file an Application for Dispute Resolution claiming against the security deposit.

The female Tenant stated that they did not give the Landlords written authority to retain any portion of the security deposit. The Agent for the Landlord argued that the written agreement to replace the post at the main gate constitutes written authority to retain a portion of the security deposit.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(1) of the *Act*, I find that the Landlords must pay the Tenant double the security deposit.

In adjudicating this matter I considered section 38(4)(a) of the *Act*, which stipulates that a landlord may retain an amount from a security deposit or a pet damage 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.

I find that the Landlords did not have the right to retain any portion of the security deposit, pursuant to section 38(4)(a) of the *Act*, on the basis of anything written on the condition inspection report that was completed on January 29, 2016, in part, because that report was not completed at the end of the tenancy. Section 38(4)(a) of the *Act* clearly specifies that the written permission must be granted at the end of the tenancy which in these circumstances was May 01, 2016.

I find that the Landlords did not have the right to retain any portion of the security deposit, pursuant to section 38(4)(a) of the *Act*, on the basis of anything written on the condition inspection report that was completed on January 29, 2016, in part, because the parties did not agree on the cost of repairing the post. Even if the Tenants had agreed at the end of the tenancy to repair the post, I find that they did not agree that the Landlords could retain a specified amount from the security deposit if they did not comply with the agreement to repair the post.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$1,500.00, which includes double the security deposit and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlords do not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced 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 *Act*.

Dated: December 06, 2016

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Residential Tenancy Branch