



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on August 15, 2016. The Tenant filed seeking the return of their security deposit.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlords. The Tenant provided affirmed testimony that he served the Landlords with copies of his application for Dispute Resolution and Notice of Hearing documents via registered mail on August 23, 2016. Copies of the Canada Post receipts were submitted in the Tenant's documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the above, I find the Landlords were deemed served notice of this proceeding on August 28, 2016, five days after they were mailed, pursuant to section 90 of the *Act*. As such, I continued to hear the undisputed evidence of the Tenant in absence of the Landlords.

### Issue(s) to be Decided

Has the Tenant proven entitlement to the return of his security deposit?

### Background and Evidence

I heard the Tenant state he entered into a verbal month to month tenancy agreement with the Landlords. That tenancy agreement required the Tenant to pay \$900.00 each month. The Tenant submitted that he was required to pay \$450.00 on July 27, 2016, as

the security deposit, which was the date he entered into the verbal agreement and was provided a key for the unit.

The Tenant submitted that the rental unit had previously been demolished and required extensive cleaning and repairs to the doors, windows, fridge, stove and carpets. He argued that the Landlords told him the unit would be ready in two weeks. However, when he returned one week after paying the deposit he found that none of the repairs or cleaning had been started.

The Tenant testified that he attempted to contact the Landlords via telephone on numerous occasions and left voice messages each time. He submitted he also attempted to try and contact the Landlords in person by attending their offices; however, the Landlords continued to avoid him.

On August 7, 2016 the Tenant had his granddaughter serve the Landlords with his forwarding address, in writing; along with his request for the return of his security deposit which was in the form of a letter dated August 4, 2016. As of this date the Landlords still had not returned his deposit so the Tenant now seeks the return of double his deposit.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*. I further find the terms of the tenancy agreement included that the Landlords would repair and clean the rental unit within two weeks, prior to the Tenant occupying the unit.

Notwithstanding the receipt stating the deposit was accepted for September 1, 2016 occupancy, I accept the undisputed evidence of the Tenant that the Landlords failed to fulfil the condition precedent agreed to in the verbal terms of this tenancy agreement when they failed to have the unit cleaned and repaired in two weeks, prior to the Tenant's scheduled occupancy. As such, I find the Tenant was entitled to repudiate the agreement as he did and was entitled to end the tenancy on or around August 10, 2016, two weeks after the deposit was paid.

Regarding the Tenant's request for the return of his deposit I considered section 38(1) of the *Act* which stipulates within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the tenancy ended August 10, 2016, as noted above, and the Landlords received the Tenants' forwarding address on August 7, 2016. Therefore, the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than August 22, 2016. The Landlords did neither.

I find, pursuant to section 62 of the *Act*, the Landlords have failed to comply with Section 38(1) of the *Act* and the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$450.00 security deposit since July 27, 2016.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above, I find that the Tenant has succeeded in proving the merits of their application, and I award him double the security deposit in the amount of \$900.00 (2 x \$450.00), pursuant to section 38(6) of the *Act*. Accordingly, I Order the Landlords to pay the Tenant the sum of **\$900.00** forthwith, pursuant to section 67 of the *Act*.

The Tenant has been issued a Monetary Order for **\$900.00**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Tenant was successful with their application and was granted a \$900.00 monetary award.

This decision is final, legally binding, and 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: February 16, 2017

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Residential Tenancy Branch