



# 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 tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:20 am in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 am. Tenant CA attended the hearing, representing herself and her co-tenant. Tenant CA ("the tenant") was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified she served the landlord with a copy of the tenants' dispute resolution hearing package including the Notice of Hearing by registered mail on January 18, 2017. The tenant provided copies of the registered mail receipt and tracking number. The tenant gave sworn testimony that the landlord signed for receipt of the package on February 2, 2017. Based on the sworn testimony and documentary evidence of the tenant and pursuant to sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the tenants' dispute resolution hearing package on January 23, 2017, the fifth day after the registered mailing of this package.

### Preliminary Issues: Adjournment Request

Prior to this hearing, the landlord submitted a brief one page letter to the Residential Tenancy Branch ("RTB") requesting an adjournment of this hearing date. According to the letter, the landlord was unable to attend on this date because of urgent family matters. The landlord's request was submitted by fax to the RTB office on February 14, 2017. The tenant testified that she did not receive a copy of this request for an adjournment and was unaware that the landlord sought to adjourn this hearing. The tenant opposed an adjournment of the hearing.

Rule 5.1 of the Dispute Resolution Rules of Procedure (the “Rules”) states that the “Residential Tenancy Branch will reschedule a dispute resolution hearing if signed written consent from both the applicant and the respondent is received by the Residential Tenancy Branch directly or through a Service BC office not less than 3 days before the scheduled date for the dispute resolution hearing.” The tenant testified that she did not agree to an adjournment of this hearing.

Rule 5.2 of the “Rules state that “[when] agreement to reschedule a hearing cannot be reached, a party or the party’s agent may make a request at the hearing to adjourn the hearing...” The landlord did not seek consent of the other party (the tenants) or appear at this hearing to seek an adjournment. Rule 7.9 of the Rules provides the criteria to meet in seeking an adjournment. Those criteria include but are not limited to the possible prejudice to each party.

The prejudice to the tenant if an adjournment were granted is that her request for the tenants’ security deposit be returned from a tenancy that ended in March 2016 would be further delayed. As well, as the tenant was not advised by the landlord that she sought an adjournment, the tenant would sacrifice her time in attending this hearing and possibly affect her opportunity to have her application heard.

I find that the landlord’s written faxed request for an adjournment is insufficient to meet the requirements of the Dispute Resolution Rules of Procedure and that the tenants’ application would be impacted by any adjournment. It is integral to the dispute resolution process to ensure that both parties have a fair opportunity to be heard. In these circumstances and after given consideration to Rule 7.9 of the RTB’s Rules, I dismiss the landlord’s request for an adjournment of this hearing.

#### Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to an amount equivalent to their combined deposits for the landlord’s contravention of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The tenant testified that this tenancy for the rental of a manufactured home began on or about July 15, 2014. No written tenancy agreement was created with respect to this month to month tenancy. The rental amount of \$575.00 was payable on the first day of each month. The tenant provided receipts that showed payment of a security deposit in the amount of \$287.50 on August 1, 2014. The tenant testified that she and her co-tenant vacated the rental unit on or about March 20, 2016 and returned the keys to the rental unit on or about March 25, 2016.

The tenant testified that on June 22, 2016, she sent a copy of the tenants' forwarding address to the landlord by registered mail,. She provided a receipt that reflected that mailing. The tenant testified that, after receipt of the forwarding address, the landlord sent her a letter stating that the tenants had destroyed the landlord's property. The landlord sent the tenants a cheque in the amount of \$60.00 reflecting the amount that the landlord believed was owed to the tenant. The tenant testified that she is not aware of any application by the landlord to retain all or a portion of her and her co-tenant's security deposit. She testified that the tenants have not cashed the cheque for \$60.00 issued by the landlord.

### 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 tenants' 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 deposits, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants 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 tenants' provision of the forwarding address. In this case, the landlord was informed of the forwarding address in writing by registered mail on June 22, 2016. The landlord had 15 days after June 27, 2016 (the deemed received date of the forwarding address) 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 neither she nor her co-tenant agreed to allow the landlord to retain any portion of their security deposit. As there is no evidence that either tenant has given the landlord written

authorization at the end of this tenancy to retain any portion of their deposits, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The tenants seek the return of their security. The landlord did not apply to the Residential Tenancy Branch to retain the tenants' deposits. The landlord did not attend the hearing in support of her request for an adjournment or to dispute the tenants' application. I find there is sufficient proof that the landlord was deemed served with both the forwarding address and the tenants' dispute resolution package in accordance with the *Act*. Given these factors, I find that the tenant is entitled to a monetary order including \$287.50 for the return of the full amount of her security deposits.

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 dispute resolution 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, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenant gave sworn oral testimony that the tenants have not waived their 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 tenants are therefore entitled to a total monetary order amounting to double the value of their security deposits with any interest calculated on the original amount only. No interest is payable for the term of this tenancy.

Having been successful in this application, I find further that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I order the tenants to destroy the landlord's cheque in the amount of \$60.00. I issue a monetary Order in favour of the tenants as follows:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$287.50
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	287.50
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$675.00</b>

The tenants are provided with a formal Order 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: February 21, 2017

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Residential Tenancy Branch