



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

The tenant applies to recover a \$1000.00 security deposit, less \$333.00 that he unilaterally declines, as payment of occupation rent for staying a few days after the tenancy ended.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Has the tenant signed over any of the deposit money to the landlord?

### Background and Evidence

The rental unit is a two bedroom upper portion of a townhouse.

The tenancy started July 1, 2013 for a two year term ending July 1, 2015. The rent was \$1650.00 per month. The tenant paid a \$1000.00 security deposit.

By written agreement on April 30, 2015, the parties agreed that the tenancy would end May 31, 2015.

A clause in the agreement stated:

If [the tenant] is not able to find someone to rent by June 2015, [he] agrees to forfeit \$500.00 of his damage deposit for loss of rent due to the early end of the lease.

The tenant vacated and possession was returned to the landlord on June 6, 2015.

The tenant provided the landlord with a forwarding address in writing by either June 2015 (says the tenant) or October 2016 (says the landlord).

The landlord has not applied to retain any or all of the deposit money.

### Analysis

The relevant law is set out in s. 38 of the *Residential Tenancy Act* (the “Act”). It provides, in part:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) **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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

*(emphasis added)*

The agreement made April 30, 2015 speaks of a “damage deposit.” Damage deposits do not exist under British Columbia residential tenancy law, however, there is no dispute but that the parties intended to refer to the security deposit; it was the only “deposit” the tenant made.

The agreement made April 30, 2015 was not an agreement made “at the end of a tenancy.” The landlord was therefore not entitled to retain any amount from the security deposit in reliance upon it.

As the landlord did not have the tenant’s agreement “at the end of [the] tenancy” to retain any of the deposit money and as he does not yet have an order for money, he is obliged to return the security deposit.

Section 38 provides for a doubling of the deposit amount in these circumstances. The tenant has not claimed the doubling in his application. Residential Tenancy Policy Guideline 17, “Security Deposit and Set off [*sic*]” provides that the doubling is to be granted even when not requested, unless a tenant specifically declines it at hearing. In this case the tenant did specifically decline the doubling.

### Conclusion

The tenant is entitled to recover his \$1000.00 security deposit plus the \$100.00 filing fee for this application, less \$330.00 he credits for occupation rent. He will have a monetary order against the landlord for the remainder of \$770.00.

This decision is not to be taken as a ruling that the landlord is not entitled to the \$500.00 referred to in the April 30, 2015 agreement, only that he was not entitled to unilaterally withhold it. He is free to make his own application seeking to recover that \$500.00.

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: April 23, 2017

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Residential Tenancy Branch