



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed evidence that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 13, 2017. The landlord did not attend or submit any documentary evidence. The tenant has submitted a copy of the Canada Post Customer Receipt Tracking label and a copy of the envelope which shows that the package was returned to the tenant as "unclaimed" by the landlord. The tenant clarified that the address used for service was provided by the landlord in the signed tenancy agreement. I accept the undisputed evidence of the tenant and find that the landlord was properly served with the notice of hearing package as per sections 88 and 89 of the Act. Although the landlord did not claim the package, I find that the landlord is deemed sufficiently served as per section 90 of the Act.

During the hearing the tenant clarified that she was seeking the return of the original \$800.00 security and the \$800.00 pet damage deposits and recovery of the filing fee. The tenant stated that she was not waiving her right to compensation under section 38 (6) of the Act and seeks compensation totalling, \$3,300.00..

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and pet damage deposits and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2017 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated January 22, 2017. The monthly rent was \$1,600.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid on January 22, 2017.

The tenant seeks a monetary claim of \$3,300.00 which consists of:

\$800.00	Return of Security Deposit
\$800.00	Return of Pet Damage Deposit
\$800.00	Compensation re: Security Deposit, Sec. 38(6) Fail to Comply
\$800.00	Compensation re: Pet Damage Deposit, Sec. 38(6) Fail to Comply
\$100.00	Recovery of Filing Fee

The tenant provided undisputed testimony that the tenancy ended on April 20, 2017 and that her forwarding address in writing was provided to the landlord on the same date. The tenant stated that at no time was permission given to the landlord to retain the combined deposits or is she aware of an application filed for the landlord to dispute their return to the tenant.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and pet damage deposits or file for dispute resolution for authorization to retain the security and pet damage deposits within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security or pet damage deposits.

I accept the undisputed evidence of the tenant and find that the landlord was provided the tenant's forwarding address in writing for the return of the \$800.00 security and \$800.00 pet damage deposits. I find based upon the undisputed evidence of the tenant that the landlord has not filed an application for dispute within the allowed 15 day period nor has the tenant provided her permission for the landlord to retain it. As such, I find that the tenant is entitled to the return of the original \$1,600.00 security and pet damage deposits. I also find pursuant to section 38 (6) that the landlord having failed to comply with section 38 (1) that the tenant is entitled to compensation equal to the value of the security and pet damage deposits of \$1,600.00.

The tenant has established a total monetary claim of \$3,200.00. The tenant having been successful in the application is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$3,300.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division 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 11, 2017

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Residential Tenancy Branch