



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MT   CNC   CNL   MNSD   OLC   FF   O

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated May 24, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order granting more time to dispute an application for dispute resolution;
- An order cancelling a notice to end tenancy for cause;
- An order cancelling a notice to end tenancy for landlord's use of property;
- An order that the Landlord return all or part of the security deposit or pet damage deposit;
- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement;
- An order granting recovery of the filing fee; and
- Other unspecified relief.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing on her own behalf and was accompanied by her spouse, G.M. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Application package was served on the Landlord in person. The Landlord acknowledged receipt. The Landlord testified she served the Tenant with a documentary evidence package by registered mail. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of the above documents. I find the above documents were sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

During the hearing, the parties confirmed the Tenant vacated the rental unit on April 18, 2017. Accordingly, it is not necessary for me to consider his request for the following orders:

- An order granting more time to dispute an application for dispute resolution;
- An order cancelling a notice to end tenancy for cause;
- An order cancelling a notice to end tenancy for landlord's use of property; and
- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

These aspects of the Application have not been considered further in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on or about March 3, 2015, and ended when the Tenant vacated the rental unit on April 18, 2017. Rent in the amount of \$750.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$375.00, which the Landlord has retained.

The Tenant testified he requested the return of the security deposit and provided his forwarding address in writing in a type-written letter, dated April 26, 2017. A copy of the letter was submitted into evidence by both parties.

The Landlord acknowledged receipt of the Tenant's letter as alleged. However, the Landlord did not return the security deposit to the Tenant because of alleged damage to the rental unit. This position was set out in an email from the Landlord to the Tenant, dated April 28, 2017, which acknowledged receipt of "2 letters asking for [the Tenant's] damage deposit in a prompt manner" and summarized damage allegedly caused during the tenancy. A copy of the email from the Landlord to the Tenant was submitted with the Landlord's documentary evidence. Further, both the Landlord and G.M. acknowledged receipt of the Tenant's letter during the hearing.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit. In this case, the evidence confirmed the Landlord was in receipt of the Tenant's forwarding address in writing no later than April 28, 2017. Therefore, the Landlord had until May 13, 2017, to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither. Accordingly, I find the Tenant is entitled to recover double the amount of the security deposit held by the Landlord, or \$750.00, pursuant to section 38(6) of the *Act*. I also find the Tenant is entitled to recover the filing fee paid to make the Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$850.00, which is comprised of \$750.00 for the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, and \$100.00 in recovery of the filing fee.

#### Conclusion

I grant the Tenant a monetary order in the amount of \$850.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 30, 2017

---

Residential Tenancy Branch