



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The tenants apply to recover a security deposit, pet damage deposit and key deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the “Act”).

The landlord, by its representative Mr. A.L., acknowledges that it owes the deposit money but disputes that it should be doubled under s.38.

The listed 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 landlord failed to comply with s.38 of the *Act*? If so, does the doubling penalty apply to the key deposit?

### Background and Evidence

The rental unit is a two bedroom apartment. The tenancy started June 1, 2016 and ended May 31, 2017, at the expiry of the fixed term. The rent was \$2950.00 per month. The tenants paid a \$1475.00 security deposit, a \$1475 pet damage deposit and a \$125.00 key fob deposit.

Mr. C.R. testifies that he attended a move-out inspection with Ms. LeB. from the landlord’s office on May 30. He says she prepared a condition report that he signed

and in which he provided a forwarding address in writing; the same address as the tenants gave in this application.

The report showed the premises to be in acceptable condition and Ms. LeB. stated to him that the tenants would be receiving all their deposit money back.

He was not given a copy of the report.

The tenants did not receive their deposit money and on June 22 he emailed Ms. LeB. asking where the money was and whether she needed the tenants' forwarding address again. Ms. LeB. replied saying she was surprised he hadn't received the money and that she would contact her office and sort it out. She did not request the tenants' forwarding address.

On June 28 the tenants again emailed Ms. LeB. about the deposit money. She replied saying she would contact her office again. The tenants were not paid and this application resulted.

Mr. A.L. for the landlord testifies that Ms. LeB. no longer works there and that there is nothing in his file to indicate a move-out condition report or a forwarding address for the tenants.

### Analysis

Section 38 of the *Act* provides that once a tenancy has ended and once the tenant provides a forwarding address in writing, the landlord has 15 days to either repay the deposit money or make an application for dispute resolution to keep all or a portion of it.

The section does not apply if the tenant has given the landlord authorization in writing to keep all or a portion of deposit money, or if the landlord has obtained a monetary order against the tenant that remains unpaid at the end of the tenancy. Neither of those circumstances exists here.

A landlord who fails to comply with the 15 day period must pay the tenant double the amount of the deposit.

On a balance of probabilities I find that the tenants did give the landlord their forwarding address in writing. Mr. C.R.'s testimony that he gave the address in the move-out condition report is corroborated by the email correspondence. He'd hardly ask if Ms.

LeB. needed the address again if he hadn't already provided it. Ms. LeB.'s response is consonant with her having the address.

It may be that the landlord no longer has the address, but that is not a defence to the effect of s.38.

The tenants are entitled to recover the \$2850.00 remainder of their deposit money (after deduction of an acknowledged \$100.00 move out fee), doubled to \$5700.00.

Regarding the key deposit, I find that while the tenants are entitled to recover it, it is not a deposit that is doubled under s.38.

A key fee is a refundable fee prescribed by s.4(1)(a) of the Residential Tenancy Regulation, a regulatory provision made pursuant to s.97(2)(k) of the *Act*.

Section 38 of the *Act* only applies to a "security deposit" and a "pet damage deposit." The definition of each of those contained in s.1 of the *Act*, specifically excludes a fee prescribed under s.97(2)(k).

### Conclusion

The tenants are entitled to a monetary award of \$5700.00 for double the remaining security and pet damage deposits, plus \$125.00 for the refundable key fee, plus recovery of the \$100.00 filing fee for this application.

The tenants will have a monetary order against the landlord in the amount of \$5925.00.

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: January 07, 2018

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Residential Tenancy Branch