



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOULEVARD ESTATES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Code           MNSD

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 14, 2017 (the "Application"). The Tenant applied for an order granting return of all or part of the security deposit or pet damage deposit, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing on her own behalf and was assisted by S.D., her mother-in-law. The Landlord was represented by K.D., an agent. All parties giving testimony provided a solemn affirmation at the beginning of the hearing.

According to the Tenant, the Application package was served on the Landlord by leaving a copy at the Landlord's office. Although unable to recall the precise date of service, the Tenant testified the Application package was served on the Landlord within a few days after the Application package was received. On behalf of the Landlord, K.D. acknowledged receipt of the Application package and testified she has been aware of the hearing since December 2017. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served on the Landlord for the purposes of the *Act*. K.D. confirmed the Landlord did not submit or serve any documentary evidence in response to the Application.

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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter – Adjournment Request

On behalf of the Landlord, K.D. requested an adjournment. She testified that an individual who was employed by the Landlord during the tenancy is living out of province and is not available to attend the hearing.

A non-exhaustive list of criteria to consider when granting an adjournment is set out in Residential Tenancy Branch Rule of Procedure 7.9. The criteria include the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment, whether the adjournment is needed to provide a fair opportunity for a party to be heard, and the possible prejudice to each party. In this case, I find that an adjournment is not appropriate. On behalf of the Landlord, K.D. confirmed she has been aware of the hearing since December 2017, more than three months ago. This provided the Landlord with ample opportunity to obtain and submit evidence in response to the Tenant's Application. The Landlord's request for an adjournment is denied.

### Issue to be Decided

Is the Tenant entitled to an order granting return of all or part of the security deposit or pet damage deposit?

### Background and Evidence

Neither party submitted a copy of the tenancy agreement between them into evidence. However, the parties agreed the tenancy began on March 1, 2016, and ended when the Tenant vacated the rental unit. The Tenant testified that she moved out on or about March 20, 2017. K.D. testified the Tenant moved out without notice and that the Landlord was not aware the Tenant had vacated the rental unit until a dispute resolution hearing that took place on April 13, 2017. The number of the related file has been included above for ease of reference. During the tenancy, rent was due in the amount of \$900.00 per month. The Tenant paid a security deposit of \$450.00, which the Landlord holds.

The Tenant testified she provided the Landlord with her forwarding address in writing on October 5, 2017. A copy of the hand-written letter was submitted into evidence by the Tenant.

On behalf of the Landlord, K.D. acknowledged receipt of the Tenant's forwarding address on October 5, 2017. However, K.D. advised that the Landlord retained the security deposit on account of unpaid rent at the end of the tenancy. The decision to do so, K.D. stated, was based on comments made by the arbitrator during the previous hearing. However, on review, the previous decision makes no reference to an entitlement by the Landlord to retain the security deposit on account of unpaid rent. K.D. submitted further that the matter was *res judicata*, and that the Tenant has not come to these proceedings with "clean hands".

### Analysis

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

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving 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 amount of the deposits.

In this case, I find the Tenant provided her forwarding address to the Landlord in writing on October 5, 2017. Accordingly, the Landlord had until October 20, 2017, to repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The testimony provided by K.D. confirmed the Landlord did neither. Accordingly, I find the Tenant has demonstrated an entitlement to receive double the amount of the security deposit, or \$900.00, pursuant to section 38(6) of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$900.00. The Landlord remains at liberty to make an application for dispute resolution to seek unpaid rent at the end of the tenancy. This is not an extension of any statutory limitation period.

Conclusion

The Tenant is granted a monetary order in the amount of \$900.00. 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: April 9, 2018

---

Residential Tenancy Branch