



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

### DECISION

Dispute Codes MNDCT, MNSD

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order for compensation for money or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

This hearing dealt with an application by the tenant for a monetary order, an order for the return of double the security deposit paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act").

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged that the tenant submitted documentary evidence but they did not submit any evidence for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary order for compensation for overpayment of rent?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began sometime in 2005 and ended on May 31, 2017. The tenants were obligated to pay \$915.00.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$425.00 security deposit. A condition Inspection report was conducted at move in but not at move out. The tenants testified that they provided their forwarding address on May 24, 2017. The tenant testified that the landlord retained the deposit without their consent. The tenant testified that they received an "illegal" rent increase in January 2012 and overpaid 15 dollars a month for 65 months = a \$975.00 overpayment and seek the recovery of that amount. Also, the tenant is seeking the

return of double their deposit  $\$425.00 \times 2 = \$850.00$  and the tenant is also seeking the recovery of the \$100.00 filing fee.

The landlord testified that the tenant has unpaid rent from April 2012 outstanding and that they were responsible for some damage to a suite below them. The landlord testified that the deposit wasn't returned because of those reasons. .

### Analysis

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

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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**

The landlord advised that he did not have the tenants' written consent to retain any of the deposit or an order from the Branch allowing him to retain an amount of the deposit or that he has filed an application seeking to retain the deposit. Based on the documentary evidence before me and the landlords' own testimony, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenants are entitled to the return of double their deposit  $\$425.00 \times 2 = \$850.00$  plus the accrued interest on the original amount of \$15.04 for a total of \$865.04.

The tenant did not provide sufficient evidence to show that they had overpaid or that the rent increase was illegal. In addition, the tenants waited five years to address the issue with the landlord who was not even the landlord who issued the notice or was managing the building at the time. I find that the tenants actions fall under implied waiver and have not exercised those rights in a timely manner. Based on the above, I dismiss the tenants claim for over payment of rent.

The tenants are entitled to the recovery of the \$100.00 filing fee.

It is worth noting, that the landlord made reference to monetary claims. The landlord is at full liberty to file their own application if they wish to make a monetary claim in regards to this tenancy.

#### Conclusion

The tenants have established a claim for \$965.04. I grant the tenant an order under section 67 for the balance due of \$965.04. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 30, 2018

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Residential Tenancy Branch