



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0751368 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of double the amount of the security and pet deposits, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord’s agent appeared at the hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. There was no issue or dispute that both parties had been properly served with the Notice of Dispute Resolution and the evidence of the opposing party within the time limits prescribed by the *Act* and the Rules of Procedure.

### Issue(s) to be Decided

Is the tenant entitled to recover double his deposits pursuant to section 38 of the *Act*?

Can the tenant recover the filing fee pursuant to section 72 (1) of the *Act*?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including any and all reports, photographs, diagrams, miscellaneous documents, letters, e-mails, and also the testimony of the parties, not all details of the evidence or the parties' respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

There were a series of written tenancy agreements filed. The parties agreed that the last fixed term tenancy commenced on March 15, 2017, for one year with rent in the amount of \$1,775.00 payable on the fifteenth day of each month. The tenancy ended on March 15, 2018, based on the tenant relocating away from Vancouver. Both a damage deposit of \$887.50 and a pet damage deposit of \$887.50 were required. The tenant gave evidence that these deposits were both paid in full as of March 6, 2017. The landlord's agent agreed that the two deposits had been paid in full.

Although the tenancy was ending as of March 15, 2018, the tenant decided to vacate early and this was done with the knowledge and consent of the landlord. The tenant and the landlord's agent did a final walkthrough of the rental unit on February 13, 2018, at which time a stain on the kitchen counter and some marks on the floor were noted.

The tenant's evidence was that he provided written notice of his forwarding address via an email sent to the landlord on February 13, 2018. A copy of this email was filed in evidence. The landlord's agent admitted to receiving the email with the tenant's forwarding address on February 13, 2018.

The landlord's agent's evidence was that the landlord has claims against the tenant for damage done to the rental unit; that to date he has never filed for dispute resolution as was trying to repair some of the damage himself and then got busy with work. He did send an email transfer to the tenant in the amount of \$1,775.00 on April 30, 2018. The tenant confirmed both in his evidence and in emails filed that he did not accept this payment.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord **is required to pay a**

monetary award, pursuant to section 38(6)(b) of the *Act*, **equivalent to double** the value of the security or pet deposit.

I find that the landlord's admission that he received the email from the tenant with his forwarding address on February 13, 2018, means that to avoid having to pay a monetary award he had to act within 15 days of the end of the tenancy (on March 15, 2018), as this is the later of the two dates as noted in section 38.

There is no issue that the tenancy ended on March 15, 2018. The landlord had to either to return the tenant's security and pet deposits in full or, to file for dispute resolution for authorization to retain the deposits within 15 days of this date.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days following the conclusion of the tenancy on March 15, 2018. The landlord's agent's evidence is that the landlord has not done so to date.

However, the provision in the *Act* that requires the landlord to take some action within 15 days does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord had obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

No evidence was produced at the hearing that the landlord had obtained an order under section 38(3)(b), retain the tenant's security deposit.

If the landlord had concerns arising from the damages that arose because of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit within the time as prescribed by the *Act*.

Pursuant to section 38 (6) (a) of the *Act*, I find that the tenant is entitled to a monetary award of \$3,550.00 representing double the amount of his security deposits.

In his Monetary Order Worksheet, the tenant referred to a "Fob deposit" of \$100.00 however, no evidence was given about this by either party during the hearing so I make no order in relation to this claim.

As the tenant was successful he may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$3,650.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 18, 2018

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Residential Tenancy Branch