



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This decision pertains to the Tenant's application for dispute resolution made on April 30, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks a monetary order for the return of a security deposit, and for recovery of the filing fee.

The Tenant attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlord did not attend the hearing.

Notice of Dispute Resolution Proceeding documentation (the "Notice") was sent to the Tenant on May 2, 2018, who then served the Landlord by registered mail. A hearing was scheduled for June 11, 2018, but the Notice stated an incorrect hearing time. Residential Tenancy Branch case management notes confirm that an information officer advised the Landlord and the Tenant of the date and time of the rescheduled hearing on June 11, 2018, and that new Notices of Dispute Resolution Hearing were subsequently emailed to both parties.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for the return of a security deposit?
2. Is the Tenant entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

The Tenant testified that they started a one-year fixed term tenancy on November 15, 2016. The Tenant vacated the rental unit on January 31, 2018. Monthly rent of \$1,200.00 was due on the first of the month and the Tenant paid a security deposit of \$600.00. The Tenant submitted into evidence a copy of a written tenancy agreement. The Tenant sent the Landlord their forwarding address in writing by registered mail on

March 2, 2018; the Tenant submitted a copy of the registered mail receipt and tracking number into evidence. Pursuant to section 90 of the Act, I deem that the Landlord received the forwarding address on March 7, 2018, five days after it was mailed.

The Tenant testified that they did not enter into any agreement with the Landlord wherein the Landlord was entitled to retain any of the security deposit. They further testified that the Landlord has not returned the security deposit.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38 (1) of the Act, "Return of security deposit and pet damage deposit" states:

Except as provided in subsection (3) of (4) (a), within 15 days after the later of

(a) the date the tenancy ends,

(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.

Section 38 (6) states that where a landlord fails to comply with section 38 (1), the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

The Tenant testified, and submitted supporting documentary evidence, that the Landlord received the Tenant's forwarding address on March 7, 2018. There is insufficient evidence to suggest that the Landlord applied for dispute resolution within 15 days of receiving the forwarding address.

Therefore, taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find the Tenant has met the onus of proving their case that they are entitled to a monetary order for the return of the security deposit.

I further find that the Landlord has not complied with section 38 (1) of the Act and, pursuant to section 38 (6) (b), the Landlord must pay the Tenant double the amount of the security deposit for a total of \$1,200.00.

I also grant the Tenant a monetary award of \$100.00 for recovery of the filing fee.

Pursuant to section 67 of the Act, I grant a monetary order in the amount of \$1,300.00.

#### Conclusion

**I grant the Tenant a monetary order in the amount of \$1,300.00. This Order must be served on the Landlord, and 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 Act.

Dated: June 18, 2018

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Residential Tenancy Branch