



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 689352 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

On April 16, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the return of their security deposit, a monetary order for damages and the return of their filing fee. The matter was set for a conference call.

The Tenants attended the conference call hearing and were affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified the Application for Dispute Resolution and Notice of Hearing were served on the Landlord, by Canada Post Registered mail, sent on April 24, 2018, a Canada post tracking number was provided as evidence of service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to a monetary order due to damages pursuant to section 67 of the *Act*?
- Are the Tenants entitled to the return of their filing fee?

### Background and Evidence

The Tenants testified that the tenancy began on October 1, 2015, as a month to month tenancy. Rent in the amount of \$1,495.00 was to be paid by the first day of each month and the Landlord had been given a **\$747.50** ~~\$725.00~~ security deposit. The Tenants entered a copy of the tenancy agreement into documentary evidence.

The Tenants then testified that on September 9, 2016, the tenancy agreement was amended when one of the original Tenants moved out and a new Tenant moved in. The Tenants testified the original tenancy agreement was left in place, and that the Landlord added the new Tenant's name to the agreement. The Tenants entered a copy of the amended tenancy agreement into documentary evidence. It was noted that this new tenancy agreement had been amended to include: the new Tenant's name and signature, and a change to the monthly rent ~~and the security deposit~~ amount. The rent listed, on the amended tenancy agreement, was in the amount of \$1,540.00 and the security deposit was listed at \$747.50. All parties initialed all changes to the amended tenancy agreement.

The Tenants testified that they gave written notice to end their tenancy in February 2018, and that they moved out of the rental unit on March 30, 2018. The Tenants testified that they conducted the move-out inspection with the Landlord on March 30, 2018, when they returned the keys to the rental unit. The Tenants stated that they wrote their forwarding address on the move-out inspection document and that at no time had they agreed to any deduction to their security deposit. The Tenants entered a copy of the move-out inspection into documentary evidence.

The Tenants also testified that the Landlord had required them to provide post-dated rent cheques for 12 months; from October 2017 to September 2018. The Tenants testified that the Landlord had not return the remaining post-dated cheques at the end of their tenancy. The Tenants testified that they were charged a \$75.00 bank fee (\$12.50 x 6, for April, May, June, July, August, and September 2018) to stop payment on the post-

dated cheques the Landlord had not returned. The Tenants are requesting to be compensated for that loss. The Tenants entered into documentary evidence a copy of a text message conversation they had with the Landlord, in which the Landlord requested 12 months' worth of post-dated cheques, and a receipt from the bank for the fees they had been charged for the stop payments.

### Analysis

Based on the evidence before me, the testimony of the Tenants, and on a balance of probabilities:

I find that the Tenants paid a \$747.50 security deposit and that the Tenants had provided their forwarding address in writing to the Landlord on March 30, 2018, the same day they moved out of the rental unit.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security and pet damage deposits to the tenant.

I find that the Landlord had until April 14, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposits.

There is no evidence before me that that the Landlord made an application to claim against the Tenant's deposits.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's security deposit or filing a claim within the statutory time line.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposits within the 15 days, the landlord must pay the tenant double the security and pet damage deposit.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenants are entitled to the return of double their security. I find for the Tenants, in the amount of \$1,495.00, and I am granting a monetary order for the return of double the security deposit.

Pursuant to Schedule 5(4) of the Residential Tenancy Regulations a landlord must return to the tenant on or before the last day of tenancy any post-dated cheques for rent that remain in possession of the Landlord.

I find that the Tenants provided 12 months of post-dated cheques for rent to the Landlord, for the months of October 2017 to September 2018. I find that when the tenancy ended the Landlord remained in possession of six of these post-dated cheques, for April, May, June, July, August and September 2018. I find that the Landlord is in breach of Schedule 5(4) of the Residential Tenancy Regulations by not returning the six remaining post-dated cheques to the Tenants.

Pursuant to section 67 of the *Act*, I find that the Tenants are entitled to the return of the costs associated with cancelling the post-dated cheques the Landlord failed to return at the end of the tenancy. Therefore, I am granting a monetary order in the amount of \$75.00 (6x12.50) to the Tenants for the return of their banking fees.

As the Tenants have been successful in this application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Security Deposit	\$747.50
Security Deposit Doubled	\$747.50
Fee's for stop payments	\$75.00
Return of Filing Fee	\$100.00
<b>Owing</b>	<b>\$1,670.00</b>

## Conclusion

I find that the Landlord has breached section 38 of the *Act*, by failing to repay or make a claim against the Tenant's security deposit as required by the *Act*.

I find that the Landlord has breached Schedule 5(4) of the Residential Tenancy Regulations by not returning the six remaining post-dated cheques to the Tenants at the end of tenancy.

I find for the Tenants pursuant to sections 38, 67 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$1,670.00**, for the return of double their security deposit, the return of their banking fees, and the return of their filing fee. The Tenants are provided with this 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 11, 2018

**Correction: July 9, 2018**

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Residential Tenancy Branch