



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD FF

### Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on March 28, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant was represented at the hearing by D.S., an agent. The Landlord attended the hearing on his own behalf. Both D.S. and the Landlord provided affirmed testimony.

On behalf of the Tenant, D.S. testified that the Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt. I find the Application package was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*.

The Landlord testified that multiple attempts were made to serve the Tenant with the documentary evidence upon which he intended to rely. However, it was not until October 13, 2018, that a copy was attached to the door of the Tenant's residence. On behalf of the Tenant, D.S. acknowledged receipt on that date. However, she submitted that the evidence was submitted late, contrary to the Rules of Procedure, and that she had not had sufficient time to review and consider it. I find the Landlord's evidence was not served in accordance with the Rules of Procedure. Therefore, it has been excluded from consideration. However, a party seeking relief has the burden of providing evidence in support of the relief sought, on a balance of probabilities. As noted below, I am satisfied the Tenant has done so.

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

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties agreed the tenancy began on March 1, 2015, and ended on March 31, 2018. During the tenancy, rent in the amount of \$975.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$487.50, which the Landlord holds.

The Tenant claims \$975.00 for the return of double the amount of the security deposit, pursuant to section 38 of the *Act*. On behalf of the Tenant, D.S. testified that a forwarding address was provided to the Landlord in writing. The Tenant submitted a type-written and signed letter dated April 4, 2018, in support. D.S. testified that this letter was sent to the Landlord's address for service as provided on the tenancy agreement by regular mail on April 8, 2018, and to the same address by registered mail on July 7, 2018. However, the security deposit has not been returned to the Tenant.

In reply, the Landlord testified he did not receive the Tenant's forwarding address. He advised he is going through a difficult divorce and that the mail may have been redirected by his spouse. The Landlord also referred to a number of difficulties during the tenancy and suggested that D.S. is difficult to deal with. In addition, the Landlord suggested the Tenant's water use was unreasonable and that the Tenant owes him compensation for unpaid utility bills and other losses.

### Analysis

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

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim to keep 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 am satisfied the Tenant provided the Landlord with a forwarding address in writing by regular mail on April 8, 2018, and by registered mail on July 7, 2018. Despite the Landlord's testimony that he did not receive the forwarding address, I find it is deemed to have been received by the Landlord, pursuant to sections 88 and 90 of the *Act*. However, the Landlord has not returned the security deposit to the Tenant.

In light of the above, I find the Tenant is entitled to recover double the amount of the security deposit, or \$975.00, pursuant to section 38(6) of the *Act*. In addition, having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,075.00, which is comprised of \$975.00 for the return of double the security deposit and \$100.00 in recovery of the filing fee.

### Conclusion

The Tenant is granted a monetary order in the amount of \$1,075.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: October 19, 2018

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Residential Tenancy Branch