



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 13, 2018. The Tenant said the hearing package was returned unclaimed. The Tenant said she sent the registered mail package to the only address the Landlord provided her with. The Landlord said he did not receive the hearing package as he lives out of province now. As well the Landlord said although his name is on the PO Box, he does not receive mail there any more.

I accept the Tenant testimony that she sent the Hearing package to the only address the Tenant had for the Landlord. It is the Landlord’s responsibility to update tenants if their address changes and in this situation there is no evidence to support this happened. Consequently, based on the evidence of the Tenant, I find that the Landlord is deemed to have been served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

### Background and Evidence

This tenancy started on April 1, 2017 as verbal month to month tenancy. Rent was \$1,850.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security and pet deposit of \$1,800.00 on April 1, 2017. The Tenant said no condition inspection reports were done for this tenancy.

The Tenant said that the other tenant moved out of the rental unit on April 1, 2018 and he received \$900.00 of the security deposit. The Tenant continued to say she moved out of the rental unit on May 1, 2018 and gave the Landlord a forwarding address in writing on May 30, 2018. The Tenant said no move in or move out condition inspection were completed. The Tenant continued to say that the Landlord did not return her security and pet deposit and she is now applied for double the deposits to be paid to her.

The Landlord said he move out of province and he thought he may have given his new address to the male tenant but he was not sure. The Landlord continued to say that he did not return the Tenants full deposit because there was damage to the unit and the Tenant did not give him proper notice to end the tenancy. The Landlord said he believes the Tenant may owe him one months rent, but he let it go because he kept the deposits and he thought he was doing the Tenant a favour. The Landlord said he has not make an application to keep the Tenant's deposits and there was no agreement to keep the Tenant's deposits. The Landlord said he thought they understood the he was keeping the deposits because of the damage and the early end to tenancy that he agreed to.

The Tenant said there was no agreement and she is requesting double her deposits as compensation for not returning the full deposits.

The Parties were offered an opportunity to settle this matter on their own terms but no settlement agreement was made.

### Analysis

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.**

I find that the Tenant did give the Landlord a forwarding address in writing on May 30, 2018. The Landlord did not repay the full security and pet deposits to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and I award the Tenant double the security and pet deposit of \$1,800.00 in the amount of  $\$1,800.00 \times 2 = \$3,600.00$  less the amount of deposit the Landlord has returned of \$900.00. The net amount the Landlord owes the Tenant is  $\$3,600.00$  less  $\$900.00 = \$2,700.00$ . The Residential Tenancy Branch Policy Guideline # 17 explains and gives examples of the calculations done when doubling a security or pet deposit.

As the Tenant has been successful in this matter, I further order the Tenant to recover the filing fee of \$100.00 from the Landlord. Pursuant to section 38 and 67 a monetary order for \$2,800.00 will be issued to the Tenant. This Monetary order represents double the security and pet deposits less the returned deposit of \$900.00 and the recovery of the filing fee of \$100.00.

### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$2,800.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: October 30, 2018

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Residential Tenancy Branch