



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This decision pertains to the tenants' application for dispute resolution made on June 20, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants seek a monetary order for the return of their security deposit (specifically, the doubled portion, pursuant to section 38(6) of the Act), and a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on October 5, 2018. The tenants, and the landlord's agent, attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

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. Are the tenants entitled to a monetary order for the return of their security deposit?
2. Are the tenants entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

The tenants testified and confirmed that the tenancy commenced on July 1, 2017 and ended on June 1, 2018. Monthly rent was \$1,700.00, and they paid a security deposit of \$850.00.

At the end of the tenancy, the tenants provided their forwarding address to the landlord

by way of email, telephone call, and in-person. Submitted into evidence is a copy of an email between the landlord and the tenants congratulating them on finding a new home, and in the email the forwarding address is included.

After waiting some time, the tenants never received the return of the security deposit, and filed for dispute resolution on June 20, 2018. Eventually, the tenant attended to the landlord's office on or about July 27, 2018 and received a cheque for \$850.00.

The tenant stated that prior communication from the landlord to them involved registered mail, and that it did not make sense that the landlord would send a refund of a security deposit by regular mail.

The landlord's agent testified that they did everything that they were supposed to do under the Act regarding returning the security deposit. Unfortunately, a single typo—a "0" instead of a blank space—resulted in the security deposit refund cheque being sent to the wrong address. The cheque was ultimately never cashed.

Further, the landlord's agent commented that it was rather unfortunate that instead of simply calling the landlord to advise them that they never received the cheque, the tenants chose instead to apply for dispute resolution.

### 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.

Subsection 38(8) states that “For the purposes of subsection (1)(c), the landlord must repay a deposit (a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*], (b) by giving the deposit personally to the tenant, or (c) by using any form of electronic (i) payment to the tenant, or (ii) transfer of funds to the tenant.

I note that sections 88(c), (d), and (f) allow documents to be served by ordinary mail, registered mail, or by being left in a mailbox or mail slot. As such, while the tenant took issue with the way that the undelivered security deposit was mailed, the landlord is permitted by law to mail a security deposit cheque by ordinary mail. Whether it prefers to send it by ordinary or registered mail is their business choice.

Finally, section 38(6) of the Act states that where a landlord fails to comply with section 38(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.

It is the undisputed evidence of the parties that the landlord repaid the security deposit by sending it to an address other than the tenants’ forwarding address. Unfortunately, a single typo, a zero added to the street number, resulted in an incorrect address. Indeed, however much the landlord truly intended to return the security deposit to the tenants, and I have no doubt that they did, the result was that the security deposit was not repaid to the tenants as required by the Act.

Therefore, taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find the tenants have met the onus of proving their case that they are entitled to a monetary award for the return of the security deposit, with an offset as noted below.

I find that the landlord has not complied with section 38(1) of the Act and, pursuant to section 38(6)(b), must pay the tenants double the amount of the security deposit in the amount of \$1,700.00. As the landlord returned \$850.00 of the doubled amount, I offset the final award in this amount for an adjusted monetary award in the amount of \$850.00.

As the tenants were successful in their application, I grant them a monetary award in the amount of \$100.00 for recovery of the filing fee.

Pursuant to section 67 of the Act, I grant the tenants a monetary order in the amount of \$950.00.

Conclusion

I hereby grant the tenants a monetary order in the amount of \$950.00. This order must be served by the tenants on the landlord pursuant to section 88 of the Act. 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 of the Act.

Dated: October 5, 2018

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Residential Tenancy Branch