



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "*Act*") for:

- A Monetary Order for the return of the security deposit pursuant to section 38 of the *Act*; and
- Reimbursement of the filing fee pursuant to section 72 of the *Act*.

The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and to make submissions. The landlord did not attend the hearing. I kept the teleconference line open throughout the duration of the hearing to allow the landlord the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed that the correct call-in number and participant code for the landlord had been provided.

The tenant testified that he served the Notice of Hearing and Application for Dispute Resolution and his evidence package on the landlord by registered mail on December 4, 2018. The tenant provided a copy of the registered mail receipt and tracking number.

The tenant stated that the landlord did not provide an address. However, the tenant testified that he found the landlord's address by conducting a title search. The tenant produced a title report document stating the landlord's address. The tenant stated that he sent the Notice of Hearing and Application for Dispute Resolution to that address by registered mail.

Pursuant to section 90 of the *Act*, I find that the landlord has been deemed served with the Notice of Hearing and Application for Dispute Resolution five days after mailing, being December 9, 2018.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of the security deposit pursuant to section 38 of the *Act*?

If so, is the tenant entitled to receive an award of double the deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to an order for reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenant testified that he entered a tenancy agreement with the landlord commencing on March 1, 2013 with rent of \$1,750.00 due on the first day of each month. The tenant stated that he paid an \$875.00 security deposit. There was no pet damage deposit. The tenant testified that the landlord named on the tenancy agreement was the property manager for the owner of the property. The tenant submitted a copy of the tenancy agreement as evidence.

The tenant produced a copy of a receipt from the landlord's property management company dated February 23, 2013 stating that the landlord had received \$875.00 in cash as the full damage deposit.

The tenant testified that at the start of the tenancy, he paid his monthly rent to the property management company. The tenant testified that subsequently the property manager was no longer involved with the property and the tenant paid his monthly rent directly to the landlord.

The tenant testified that he moved out of the rental unit on April 30, 2018.

The tenant testified that he sent the landlord his forwarding address in writing on May 17, 2018. The tenant submitted a copy of a letter dated May 16, 2018 which demanded a return of the security deposit and notification of the tenant's forwarding address. The tenant testified that he sent this letter to the landlord by registered mail on May 17,

2018. The tenant provided a copy of the registered mail receipt and the Canada Post tracking number.

The tenant testified that the landlord gave him a check for \$650.00 at the end of May 2018. The tenant testified that the landlord denied any liability to the tenant and he stated that some one else was responsible for the security deposit. However, the tenant testified that the landlord told him that he was giving the check to the tenant as a gift because the landlord liked the tenant and they had a close relationship.

The check was dated May 12, 2018 and the handwritten reference on the cheque stated "Refund Security Deposit that I didn't received it all [sic]". The signature on the check is difficult to read. The first name of the signature is illegible but the last name of the signature appears to match the landlord.

The tenant testified that he has not deposited the check since the landlord has denied owing the security deposit. The tenant testified that he still has the cheque in his possession but he testified that he has only retained it for evidence purposes and that he will not deposit it.

The tenant testified that, other than the cheque for \$650.00, he has not received any other funds from the landlord. The tenant testified that the landlord has not served the tenant with an application for dispute resolution to retain the deposit.

### Analysis

Section 38 of the *Act* states that the landlord must return the security deposit to the tenant or file an application for dispute resolution within 15 days of the tenant leaving the property and providing their forwarding address in writing.

I find that the tenant vacated the property on April 30, 2018 and the tenant sent his forwarding address in writing on May 17, 2018. Pursuant to section 90 of the *Act*, the letter with the tenant's forwarding address is deemed to have been received by the landlord five days later, being May 22, 2018. Accordingly, the deadline for the landlord to refund the deposit or file an application for dispute resolution was June 6, 2018.

I find that the landlord did deliver the check for \$650.00 before the June 6, 2018 deadline had elapsed since the check was dated May 12, 2018 and the tenant testified that the check was delivered at the end of May 2018.

The tenant testified that the \$650.00 was a gift, not a security deposit refund. However, I do not find this argument persuasive. The cheque was delivered immediately after the end of the tenancy between these parties during a time period when landlords are obligated to refund or dispute security deposits. Furthermore, the cheque reference refers to the security deposit not a gift. I find on the balance of probabilities that this was a partial refund of the security deposit.

However, section 38(1) of the *Act* requires the landlord to refund the entire deposit or file an application to dispute resolution. Section 38(1) of the *Act* does not permit the landlord to retain a portion of the security deposit without making an application for dispute resolution. I find that the landlord has violated section 38(1) of the *Act* by not timely refunding the entire security deposit or making an application for dispute resolution.

Section 38(6) of the *Act* states that when a landlord violates section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. As I find that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay double the security deposit to the tenant, which is the sum of \$1,750.00, pursuant to Section 38(6) of the *Act*.

The landlord is entitled to a credit for the \$650.00 partial refund that the landlord has provided.

Since the tenant has prevailed in this matter, I find that the tenant is entitled to a reimbursement of the filing fee.

The net award to landlords is accordingly \$1,200.00 as set forth below:

Item	Amount
Double the security deposit (\$875.00 x 2)	\$1,750.00
Filing recovered by landlord	\$100.00
Less: Partial security deposit refund	(\$650.00)
Net Award to the tenant	<b>\$1,200.00</b>

Accordingly, I order the landlord to pay the tenant the sum of \$1,200.00.

Conclusion

I find that the tenant is entitled to a monetary award of \$1,750.00 for an amount equal to double the security deposit.

I find that the tenant is entitled to recover \$100.00 as reimbursement of his filing fee.

I find that the landlord's payment of \$650.00 should be deducted from the amount owed to the tenant.

The net award is the sum of \$1,200.00 payable by the landlord to the tenant.

The tenant is granted a monetary order in the amount of **\$1,200.00**. This order must be served on the landlord. If the landlord does not comply with this order, the tenant may enforce this order in the Small Claims Division of the British Columbia 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: January 25, 2019

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Residential Tenancy Branch