



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WEST FRASER HOLDINGS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFT MNSD**

### **Introduction**

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

- An order that the landlord return all or part of a security deposit pursuant to section 38; and
- An order to recover the filing fee from the landlord pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord was represented by JB ("landlord"). The landlord confirmed that she received the tenant's notice of hearing package and evidence on November 26, 2018 by registered mail. The landlord had no issues regarding service of the notice of hearing documents. I find the landlord was served with these documents in accordance with section 89 of the *Act*. No documentary evidence was submitted by the landlord. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

### **Issue(s) to be Decided**

Is the tenant entitled to return of the doubling portion of the security deposit?  
Can the tenant recover the filing fee?

### **Background and Evidence**

A copy of the tenancy agreement was provided by the tenant. The tenancy began on May 1, 2018 as a fixed one year term tenancy to end on April 30, 2019. Rent was set at \$1,625.00 per month payable on the first day of each month. A security deposit in the amount of \$813.00 was collected at the commencement of the tenancy.

The parties agree that the tenant gave notice to the landlord that he would be ending the tenancy early and advised the landlord that he would try to find another tenant. An agreeable tenant was found to commence living in the rental unit, and this new tenant and the landlord entered into a new tenancy agreement commencing November 1,

2018. On October 31, 2018 the tenant and the landlord met for a move-out condition inspection report. The landlord agreed that there was no damage done to the unit and told the tenant that he would receive his full security deposit back in 10 to 12 days. The parties agree that the tenant provided the landlord with his forwarding address in writing on October 31, 2018.

The tenant testified that he emailed the landlord on November 15, 2018 asking where the cheque was. He did not receive a reply to the email. The tenant applied for dispute resolution on November 20, 2018, seeking the return of the security deposit.

On November 24, 2018, text messages were exchanged between the landlord and the tenant. A copy of the exchange was entered as evidence by the tenant. On November 26, 2018, the landlord advises the tenant, *"Checked records. your right, only made it part way in the system. Cheque has been sent to you by registered mail. Copy of receipt attached."*

The tenant received the cheque and deposited it into his bank account on December 3, 2018.

The landlord testified that when she received the tenant's application for dispute resolution, she didn't understand why the tenant had filed it as she thought the cheque had been sent out by staff in the office. After doing some checking, she realized that it had not been sent out due to the postal strike that went on between November 15 and November 23, 2018. As soon as she realized the cheque had not been sent, she sent it by registered mail on November 26, 2018.

### Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

Residential Tenancy Branch Policy Guideline PG-17 [Security Deposit and Set off] describes how and when security deposits are to be retained or returned. Sections 10 and 11 of PG-17 are relevant to this case, reproduced below:

10. The landlord has 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 return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.
11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, **the landlord must pay the tenant double the amount of the deposit.** Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

The parties agree the landlord received written notice of the tenant's forwarding address on October 31, 2018. The landlord was obligated to return the security deposit by no later than November 15, 2018. Registered mail is only one of several methods of service that could have been used to return the deposit in accordance with section 88 of the Act. The landlord was not obligated to use it. Moreover, the landlord's evidence that the postal strike lasted from November 15 to November 23, 2018 is not relevant to this matter as the strike commenced on the last possible day she could have sent it.

While the tenant has received the original security deposit in the amount of \$813.00, he is entitled to double that amount since the landlord did not return it within the 15 days after receiving notice of forwarding address. Consequently, the tenant is entitled to compensation in the amount of a further **\$813.00** from the landlord. A monetary order in that amount is granted to the tenant.

As the tenant was successful in his application, the tenant is entitled to recover the **\$100.00** filing fee for the cost of this application from the landlord.

### Conclusion

I issue a monetary award to the tenant in the amount of \$913.00.

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: February 25, 2019

---

Residential Tenancy Branch