



# 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 as a result of the Tenant's Application for Dispute Resolution, made on November 21, 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
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on March 15, 2019 as a teleconference hearing. The Tenant appeared and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served on the Landlord by registered mail on November 23, 2018. The Tenant provided the registered tracking number in support. Based on the oral and written submissions of the Tenant, and in accordance with Sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on November 28, 2018, the fifth day after the registered mailing. The Landlord did not submit documentary evidence in response to the Application.

### Preliminary and Procedural Matters

The Tenant submitted an amendment to his Application to remove one of the Landlords from the Application. Pursuant to Section 64(3)(c) of the *Act* a director may amend an Application for dispute resolution or permit an Application to be amended. In this case, I find that the Tenant does not have one of the Landlord's full legal name, therefore the name has been removed.

Issue(s) 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, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant testified that the fixed term tenancy began on May 1, 2018 and ended on October 31, 2018. During the tenancy, rent in the amount of \$1,200.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 which the Landlord continues to hold.

The Tenant testified that he sent the Landlord his forwarding address in writing by registered mail on November 6, 2018. The Tenant submitted the registered mail receipt in support. In the letter, the Tenant requested the full amount of the security deposit be returned to him. The Tenant provided a copy of the letter in support.

The Tenant stated there was no move out condition inspection completed at the end of his tenancy. The Tenant stated he was not provided with any opportunities to complete an inspection, nor did he agree to any deductions from the security deposit. The Tenant testified that he is not aware of any Application made by the Landlord seeking to retain his security deposit.

The Tenant is seeking the return of his security deposit as well as the filing fee paid for the Application. No one on behalf of the Landlord attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the documentary evidence before me for consideration 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 against 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 comply with section 38(1) of the Act and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenant vacated the rental unit on October 31, 2018 and provided the Landlord with his forwarding address by registered mail on November 6, 2018. Pursuant to Sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on November 11, 2018, the fifth day after the registered mailing.

As there is no evidence before me that that the Landlord was entitled to retain all or a portion of the security deposit under the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until November 26, 2018, to repay the deposit or make an application for dispute resolution. The Landlord did neither.

Therefore, pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord. In this case, I find the Tenant has established an entitlement to a monetary amount of \$1,200.00 (\$600.00 x 2 = \$1,200.00). Having been successful, I also 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 find the Tenant is entitled to a monetary order in the amount of \$1,300.00.

### Conclusion

The Tenant is granted a monetary order in the amount of \$1,300.00. The order should be served as soon as possible and may be filed 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: March 18, 2019

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Residential Tenancy Branch