



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOLLD MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### 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 double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 30, 2019. Both parties confirmed the landlord did not submit any documentary evidence. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, it was clarified with both parties that the tenant had filed an amendment lowering the monetary claim to \$1,362.50. The tenant's amendment states that the landlord return a \$962.50 pet damage deposit on June 14, 2019 and the tenant now seeks compensation of \$962.50 for the landlord failing to comply pursuant to section 38(6), recovery of the \$100.00 filing fee and \$100.00 for aggravation. Both parties confirmed their understanding. No issues were presented.

During the hearing the tenant's request for \$100.00 for the aggravation in filing an application for dispute was discussed in detail. The request was dismissed without leave to reapply. Both parties were notified that the Residential Tenancy Act does not provide for compensation for aggravation and that section 72 of the Act speaks to recovery of the filing fee only.

Both parties confirmed the tenant served the landlord with the amendment to the application for disputes via Canada Post Registered Mail. As such, I find that both parties have been sufficiently served as per section 90 with the amendment to the application for dispute.

Near the conclusion of the hearing the arbitrator experienced a disconnection from the hearing while using the “UC” headset. A review of the headset shows no issues and the arbitrator called back into the hearing and within 1 minute and the hearing was concluded with no further issues.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation of the pet damage deposit and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

This tenancy began on September 1, 2016 on a fixed term tenancy ending on August 31, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 31, 2016. The monthly rent began as \$1,925.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$962.50 was paid.

The tenant seeks a clarified monetary claim of \$1,062.50 which consists of:

\$962.50	Compensation, Sec. 38 (6) Fail to Comply
\$100.00	Filing Fee

Both parties confirmed the tenancy ended on August 31, 2018. Both parties confirmed that the tenant provided written notification on July 31, 2018 requesting an end to the tenancy for August 31, 2018 and the return of the security and pet damage deposits totalling, \$1,925.00. Both parties confirmed the landlord requested this notice to be sent via email to the landlord which both parties confirmed took place. The tenant provided

undisputed testimony that on August 31, 2018, the tenant's forwarding address was provided to the landlord, but the landlord's agent requested that the address be typed into the landlord's phone.

The landlord's agent stated that due to poor recording keeping the landlord was not aware that the tenant had paid a \$962.50 pet damage deposit and was still unaware of that fact until receiving the tenant's application for dispute. The landlord's agent stated that the signed tenancy agreement was entered into by another property management company prior to this agent's company being retained.

Both parties confirmed the landlord did not file an application for dispute of returning the security and pet damage deposits. Both parties confirmed the tenant did not provide consent to the landlord to retain the security and pet damage deposits.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of both parties that the tenancy ended on August 31, 2018 and that the tenant provided her forwarding address in writing for return of the security and pet damage deposits to the landlord. This was further done with the tenant providing her forwarding address in writing on the landlord's agent's phone at the agent's request. Both parties confirmed that the security deposit was initially returned, but that the pet damage deposit was not returned until June 14, 2019 after the tenant had served the landlord with her application for dispute.

I note that the landlord's record keeping of the tenancy relationships is not within the role or responsibility of the tenant. I also note that the tenant provided undisputed testimony that as part of the notice to end tenancy by the tenant, the request was for the security and pet damage deposits totaling, \$1,925.00.

I find that the tenant has established a claim for compensation pursuant to section 38(6) of the Act for \$962.50 for failing to return the pet damage deposit as per section 38(1) of the Act. The landlord did not return the \$962.50 pet damage deposit within the allowed time frame nor did the landlord file an application to dispute its return.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,062.50.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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: July 23, 2019

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Residential Tenancy Branch