



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on May 9, 2019 wherein the Tenant sought return of the security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on August 12, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. What should happen with the Tenant's security deposit?
2. Should the Tenant recover the filing fee?

### Background and Evidence

Although a copy of the residential tenancy agreement was provided in evidence I was not able to view the copy; as such the parties gave testimony as to the terms of the tenancy. The undisputed evidence was that the tenancy began May 28, 2017. Monthly rent was \$2,350.00 and the Tenant paid a \$1,075.00 security deposit.

The Tenant testified that the tenancy ended at the beginning of May 2018. The Tenant sent his forwarding address to the Landlord on May 16, 2018.

The Tenant further testified that the Landlord did not return the security deposit, nor did he make an application for dispute resolution. Documentary evidence submitted by the Tenant indicates the Landlord initially claimed to have returned the funds and then communicated that he believed he should retain them due to damage to the rental unit.

The Landlord confirmed he received the Tenant's forwarding address by text message. He stated that due to family commitments and financial troubles he was not able to pay the security deposit to the Tenant. He also filed documents in evidence indicating the rental unit was not cleaned and repaired at the end of the tenancy.

The Landlord confirmed he did not return the security deposit to the Tenant and he did not make an application for dispute resolution.

### Analysis

The Tenant applies for return of his security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that he did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenants forwarding address in writing on May 16, 2018. While text message is generally not acceptable in terms of the requirement to provide a forwarding address *in writing* in this case the Landlord confirmed receipt such that I find he received the message on the date it was sent and was aware the Tenant wanted his funds returned.

The Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

The Landlord admitted that he was experiencing financial difficulties and was not able to return the deposit to the Tenant. However, the security deposit is to be held in trust for the Tenant by the Landlord. The Landlord may only keep all, or a portion, of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Should the Landlord wish to pursue monetary compensation from the Tenant for damage to the rental unit or other related losses he may do so, however he is not able to make such a claim through the Tenant's Application. The Landlord is also reminded of the strict two year time limit imposed by section 60 of the *Act*.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$2,250.00** , comprised of double the security deposit (2 x \$1,075.00) and the \$100.00 fee for filing this Application.

The Tenant also claimed interest. Pursuant to the interest rate calculator provided on the Residential Tenancy Branch website, no interest is payable in this case.

The Tenant also claimed registered mail costs, and the cost to photocopy his evidence. Such disbursements are not recoverable under the *Act* and I therefore dismiss this portion of his claim.

### Conclusion

The Tenant's application for return of double his security deposit and recovery of the filing fee is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$2,250.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: August 13, 2019

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Residential Tenancy Branch