



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACE REALTY  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on May 23, 2019 (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/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by W.E. and M.J., agents. The Tenant, W.E., and M.J. provided affirmed testimony.

The Tenant testified that the Landlord was served with the Application package in person on May 30, 2019. The Landlord's agents confirmed receipt on that date. Therefore, I find the Application package was received by the Landlord on May 30, 2019.

The Landlord submitted documentary evidence in response to the Application. The Landlord's agents testified it was served on the Tenant by leaving a copy with his mother on September 4, 2019, 2 days before the hearing. The Tenant noted the evidence was not served in accordance with the Rules of Procedure and testified he did not have an adequate opportunity to consider and respond to it. As the Landlord's evidence was not served on the Tenant in accordance with Rule of Procedure 3.15 – despite having received notice of the hearing roughly 3 months before the hearing – I find the evidence should not be considered and has been excluded. However, based

on the testimony of the Landlord's agents, I find the outcome would have been the same in any event.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues 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?
2. Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on August 1, 2018. The parties agreed the tenancy ended on March 31, 2019. During the tenancy, rent was due in the amount of \$775.00 per month. The Tenant paid a security deposit in the amount of \$387.50, which the Landlord holds.

The Tenant testified that a forwarding address was provided to the Landlord in writing during the move-out condition inspection that took place on March 31, 2019. A copy of the last page of a condition inspection report that included the Tenant's forwarding address was submitted into evidence in support. In addition, the Tenant testified that he sent a reminder to the Landlord on April 17, 2019. A copy of the letter was submitted in support.

In reply, the Landlord's agents acknowledged the forwarding address was received on March 31, 2019. However, they testified that the security deposit was retained due to unpaid utility bills.

The Tenant also sought to recover the filing fee paid to make the Application.

### Analysis

Based on the documentary evidence 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 an application to keep 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 do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory. The parties were advised that the condition of the rental unit, or unpaid rent or utilities at the end of the tenancy, are not relevant considerations on a tenant's application for the return of a security deposit.

In this case, I find the tenancy ended on March 31, 2019, on which date the parties completed a move-out condition inspection. Further, I find the Landlord was provided with the Tenant's forwarding address in writing on March 31, 2019, during the move-out condition inspection. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until April 15, 2019, to repay the deposit or make a claim against it by filing an application for dispute resolution. The Landlord's agents testified that the security deposit was retained due to unpaid utility bills. I find this is not a valid basis for the Landlord to retain the security deposit.

As a result, pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit held by the Landlord, or \$775.00. Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to sections 38 and 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$875.00.

Conclusion

The Tenant is granted a monetary order in the amount of \$875.00. The order may be filed in 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: September 6, 2019

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Residential Tenancy Branch