



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on June 25, 2019, in which the Tenants sought return of double their security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on October 7, 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. Are the Tenants entitled to return of double their security deposit?
2. Should the Tenants recover the filing fee?

### Background and Evidence

The Tenants seek return of double the security deposit paid. A review of Branch records confirms the parties have attended two other hearings, including one before Arbitrator Wood on January 28, 2019 and another before Arbitrator Trotter on May 31, 2019. In the first hearing the Tenants sought return of their security deposit. Arbitrator Wood found that the Tenants paid a security deposit of \$862.50.

Pursuant to the Decision of Arbitrator Wood, the Landlord was ordered to either return the Tenants' security deposit in full or make an application to retain the Tenants' security deposit by no later than February 26, 2019.

The Landlord applied for dispute resolution on February 9, 2019. Although he made this application, he failed to apply to retain the Tenants security deposit. By Decision dated June 7, 2019, Arbitrator Trotter permitted the Landlord to retain \$150.00 of the Tenants' security deposit.

The Tenants made the within application for return of double their security deposit on June 25, 2019.

At the hearing before me the Landlord stated that he did not return the balance of the Tenants' security deposit to them as they made this application shortly after Arbitrator Trotter's decision was rendered.

### Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

A landlord may only retain a tenant's security deposit through authority under the *Act*.

In the case before me, the Landlord was ordered to make an application to retain the Tenant's security deposit, or return the funds by no later than February 26, 2019. While the Landlord made an application for monetary compensation, the Landlord failed to request authority to retain the Tenant's security deposit.

I find that the Landlord failed to make the application as ordered by Arbitrator Wood. As such the Tenants are entitled to return of double the security deposit paid pursuant to section 38(6) of the *Act*.

When dealing with the doubling provisions of section 38(6) guidance can be found in *Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* which provides in part as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- **Example A:** A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

- **Example B:** A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ( $\$400 - \$100 = \$300$ ;  $\$300 \times 2 = \$600$ ).

- **Example C:** A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).

**Note:** Interest is not included in the examples above, for the sake of simplicity. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled.

In this case Arbitrator Trotter authorized the Landlord to retain \$150.00 of the Tenants' security deposit. I find that this situation most closely resembles Example B above as the Landlord had authority to retain some portion of the Tenants' deposit.

As such, I find the Tenants are entitled to the sum of **\$1,425.00** calculated as follows:

$\$862.50$  (deposit paid) -  $\$150.00$  (amount Landlord authorized to retain) =  $\$712.50$

$\$712.50 \times 2$  (pursuant to section 38(6) of the *Act*) =  $\$1,425.00$

As the Tenants have been successful in their Application, I also award them recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

### Conclusion

The Tenants are entitled to monetary compensation in the amount of **\$1,525.00** representing double the security deposit paid (less the amount they were permitted to retain pursuant to a prior decision) and recovery of the filing fee. The Tenants are granted a Monetary Order for this amount and must serve the Monetary Order on the Landlord. Should the Landlord not pay, the Tenants may file the Monetary Order in the B.C. Provincial Court (Small Claims Division)

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: October 23, 2019

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Residential Tenancy Branch