



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD FFT

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for a monetary order for the return of their security deposit and compensation pursuant to Section 38 of the Act, and to recover the filing fee.

Both parties attended the hearing and were given full opportunity to present relevant evidence and make relevant submissions. The parties were provided opportunity to mutually resolve their dispute to no avail. Each acknowledged exchanging evidence as was provided to the proceeding. The hearing advanced on the merits of the tenant's application respecting the security deposit. Prior to concluding the hearing both parties acknowledged they had presented all the *relevant* evidence that they wished to present.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed respecting the security deposit?

### **Background and Evidence**

The *relevant* evidence in this matter is as follows.

The tenancy began in July 2017 and was guided by a written tenancy agreement. The parties agreed the tenancy ended July 31, 2018. At the outset of the tenancy the landlord collected a security deposit in the amount of \$770.00 which the parties agreed the landlord still retains in trust, despite an attempt to return some in October 2019.

The landlord acknowledged they did not conduct a *move in* or *move out* condition inspection with the tenant, in accordance with the Act. The parties agree the tenant provided the landlord a written forwarding address on June 28, 2019 together with their Tenant's Notice to vacate. At the end of the tenancy the parties did not agree as to the

administration of the tenant's deposit. The landlord testified the tenant was responsible for some utility charges therefore in the absence of agreement respecting the deposit they determined to retain the entire deposit pending more information. In October 2019, the landlord sorted out the tenant owed \$126.36 for utilities, which is undisputed by the tenant. The landlord testified then attempting to return the balance of the deposit in October 2019 which was not accepted by the tenant pending this hearing.

### **Analysis**

*The parties can access the Act, referenced publications or other resources at [www.bc.ca/landlordtenant](http://www.bc.ca/landlordtenant).*

I have considered all the *relevant* evidence in this matter. In this type of matter, it must be known that a security or pet damage deposit paid by the tenant always is the property of the tenant but is held in trust by the landlord for the duration of the tenancy to then be administered in accordance with the Act at the end of the tenancy.

I find that **Sections 24 and 36** of the Act clearly state that if the landlord does not conduct the required condition inspections in accordance with the Act (as prescribed by Sections 23 and 35) *the landlord's right to claim against the security or pet damage deposit is extinguished*. Under such circumstances, at the end of a tenancy once having received the tenant's forwarding address, unless the parties otherwise agree respecting the deposit(s), the landlord is left solely an obligation to return to the tenant their entire deposit.

If necessary, it must be noted that returning the deposit(s) does not preclude or prevent the landlord from making an application for *damages to the unit or other loss* within the time permitted pursuant to Section 60(1) of the Act (that is, 2 years from the end of tenancy date).

I find **Section 38(1)** of the Act states that the landlord must return the deposit(s) of the tenancy or apply for dispute resolution making a claim against the deposit(s) within 15 days after *the later of* the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenant's forwarding address in writing on June 28, 2019 and *under the circumstances of this matter*, that being precluded from making a claim against the security deposit, I find the landlord's sole recourse was to repay any deposit in its entirety within 15 days after receiving the tenant's forwarding address. The landlord instead retained the entire deposit without the tenant's agreement. The Act prescribes, pursuant to Section 38(6), that the

landlord is liable and **must** pay the tenant *double* the amount of any deposit as applicable.

I find the tenant is entitled to compensation prescribed by **Section 38(6)** of the Act requiring the landlord to compensate the tenant *double* the amount of their original deposit in the sum of \$1540.00. (there is no applicable interest assigned to the deposit in this matter). I deduct from the tenant's entitlement the amount of \$126.36 for utilities as agreed by the parties, for an award to the tenant in the amount of \$1413.64. As the tenant was successful in their application, they are entitled to reclaim their \$100.00 filing fee from the landlord for a net award of **\$1513.64**.

*Calculation for Monetary Order*

Double security deposit held in trust (\$770.00 x 2)	\$1540.00
Filing fee for the cost of this application	100.00
<i>Less agreed amount for utilities</i>	<i>-126.36</i>
<b>Monetary Award to tenant</b>	<b>\$1513.64</b>

## **ORDERS**

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$1513.64**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

## **Conclusion**

The tenant's application is granted in the above terms.

**This Decision is final and binding.**

*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: December 10, 2019

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Residential Tenancy Branch