



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Preliminary and Procedural Matters

At the outset of the hearing, I confirmed the parties had exchanged their respective documents and I admitted their documents into evidence.

The tenant had named the landlord's agent as the landlord in filing this application. The name of the landlord was amended to reflect the corporate landlord as identified on the tenancy agreement, with consent of both parties.

The hearing process was explained to the parties and the parties were permitted the opportunity to ask questions about the process.

### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

### Background and Evidence

The one-year fixed term tenancy started on April 1, 2019 and the tenant paid a security deposit of \$687.50. The monthly rent was set at \$1,375.00 due on the first day of every month.

A move-in inspection was conducted by both parties and a move-in inspection report was prepared.

The tenant gave short notice to end tenancy in May 2019 with an effective date of June 1, 2019 initially but vacated the rental unit even earlier on May 15, 2019.

Both parties were in agreement that on May 15, 2019 the tenant approached the building manager to inform her she had vacated the unit; however, the parties provided different versions of what occurred on May 15, 2019 that I have summarized below.

According to the landlord's agents the building manager was busy conducting a fire inspection at that time the tenant approached her but asked the tenant to do a move-out inspection at the end of the day, but the tenant did not want to wait until the end of the day and the landlord's agent later found the keys to the unit on the counter of the rental unit.

The tenant testified that when she approached the building manager on May 15, 2019, she asked about doing a move-out inspection with the building manager and the building manager's response was that doing an inspection did not matter as she would not be getting her security deposit back.

Since the landlord's agent were not present for the interaction that took place on May 15, 2019, the building manager was called as a witness. The building manager testified that she was approached by the tenant on May 15, 2019, while she was in the midst of a fire inspection of several units, and the tenant informed her that she had finished moving out and the tenant asked the building manager where to put the keys to the rental unit to which the manager instructed her to put them in the landlord's office which is where the building manager found them. The building manager acknowledged that she was unconcerned about conducting a move-out inspection with the tenant and she did not try to schedule one with the tenant as she recalls the rental unit was left clean.

The tenant emailed a forwarding address to the landlord in early June 2019. A few days later the landlord proceeded to make a claim for compensation against the tenant and sought authorization to retain the tenant's security deposit by way of that Application for Dispute Resolution. The landlord's claim was set for hearing on September 17, 2019 (file number referenced on the cover page of this decision). The tenant appeared for the hearing of September 17, 2019 but there was no appearance on part of the landlord.

The Arbitrator presiding over the September 17, 2019 hearing dismissed the landlord's application without leave. The Arbitrator did not provide the tenant with a Monetary Order for return of the security deposit, contrary to Residential Tenancy Policy Guideline 17, without explanation.

Despite dismissal of the landlord's claims, the landlord did not return the security deposit to the tenant. Nor, did the landlord make an Application for Review Consideration to request a review hearing on the basis the landlord could not attend the September 17, 2019 hearing due to circumstances that were beyond the landlord's control and not anticipated. On September 19, 2019 the tenant made this Application for Dispute Resolution seeking return of double the security deposit.

During the hearing before me, the landlord was of the position the landlord is automatically entitled to retain the tenant's security deposit because the tenant ended the fixed term tenancy early and the tenancy agreement provides for liquidated damages in an amount equal to the security deposit where a tenant ends the fixed term tenancy early. The liquidated damages clause provides as follows:

3. **Liquidated Damages:**

Without prejudice to any other remedies available to the Landlord, if the Tenant ends the tenancy prior to the end of the term of the Tenancy Agreement, or is in breach of the Residential Tenancy Act or a material term of the Tenancy Agreement that causes the Landlord to end the tenancy prior to the end of the term of the Tenancy Agreement, the Tenant will pay to the Landlord the sum of \$~~1,000~~<sup>1,250</sup> as liquidated damages. Such liquidated damages are an agreed pre-estimate of the Landlord's cost of re-renting the Premises and must be paid in addition to any other amounts owed by the Tenant to the Landlord. The Tenant will also be responsible for any rent remaining due during the remainder of the term of the Tenancy Agreement, until the Premises are re-rented. Landlord will take all reasonable steps to ensure the Premises are re-rented as soon as possible in order to mitigate any damages for breach of the Tenancy Agreement by the Tenant.

I did not request a response form the tenant with respect to this position as I rejected it summarily. The liquidated damages clause does not provide that the amount of the liquidated damages shall be deducted from the security deposit and, if it did, the term would not be enforceable under the Act since section 20(e) prohibits terms that provide for automatic authorization or forfeiture of a security deposit.

The landlord was also of the position the tenant had authorized the landlord to retain her security deposit in a text message of May 7, 2019. The text message read, in part, as follows:

I regret to inform you that due to a family emergency, I need to terminate my tenancy with Clipper Cove Apartments. I understand that this may cost me my damage deposit but there is simply nothing I can do. I must move to take care of a very ill family member. I should be vacating the unit by June 1st but possibly sooner. I won't be around much as I am needed elsewhere but feel free to show my apartment ANYTIME commencing today. Please let me know once you receive this email.

The tenant responded by pointing out she had stated her early termination of the tenancy “may” cost her the security deposit, but it did not amount to her authorizing the landlord to retain it. Rather, her intention was to illicit further discussion with the landlord.

### Analysis

Unless a tenant has lost the right to return of the security deposit, section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

A tenant loses the right to return of the security deposit if the landlord has been provided authorization to retain it or make deductions from it by an Arbitrator or by the tenant, in writing. The landlord did not have authorization of an Arbitrator to retain or make deductions from the security deposit. The landlord was of the position the tenant gave written consent to the landlord in the text message of May 7, 2019; however, I find the text message does not amount to authorization. Firstly, it is a text message which is not a signed document given in a manner that complies with section 88 of the Act. Secondly, the verbiage used was “may” and I find that is not unequivocal authorization. Therefore, I reject the landlord's position that the tenant authorized the landlord to retain her security deposit.

A tenant also loses the right to return of the security deposit if the tenant fails to participate in a move-in or move-out inspection with the landlord despite the landlord giving the tenant two opportunities to do so. Although the tenant gave short notice to end tenancy, the landlord did not schedule above-out inspection with the tenant. The tenant also approached the building manager on the day she finished moving out and the building manager did not attempt to schedule a move-out inspection with the tenant. Therefore, I find the landlord did not give the tenant the opportunity to participate in the move-out inspection and the tenant did not extinguish her right to return of the security deposit.

It is apparent the landlord was of the position it was entitled to compensation from the tenant for breach of the fixed term tenancy agreement, among other things; however, the landlord made such a claim already and those claims have been dismissed. It is not before me to reconsider those claims.

Despite having its claims against the security deposit dismissed, the security deposit has not yet been refunded to the tenant, meaning it still remains in trust for the tenant.

The tenant has communicated that she seeks the return of the security deposit and I find no reason for the landlord to continue to hold onto it since the landlord no longer has the right to make a claim against the security deposit.

I do not award the tenant doubling of the security deposit since she has not provided the landlord with a forwarding address in writing and receipt of the forwarding address in writing is the triggering event for the landlord to take action with respect to the security deposit. The tenant did provide her forwarding address in an email; however, email is not a recognized method of providing a document to the other party under section 88 of the Act. As such, the landlord's 15 day time limit has yet to expire.

Generally, where a tenant has failed to provide the landlord with her forwarding address in writing prior to filing an Application for Dispute Resolution seeking return of the security deposit, the Arbitrator will either: put the landlord on notice that it now has the tenant's forwarding address by way of the Tenant's Application for Dispute Resolution and to take action to refund it or make a claim against the security deposit within 15 days; or, instruct the tenant to give the forwarding address in writing and reapply if the landlord does not take action to refund the security deposit or make a claim against it within 15 days. However, in this case, the landlord has already lost the right to make a

claim against the security deposit in having its application dismissed on September 17, 2019. As such, the only remedy left to dispose of the security deposit is to return it to the tenant and I see no point in dismissing this Application for Dispute Resolution with leave only for the tenant to have to reapply. Therefore, I provide the tenant with a Monetary Order for return of the single amount of the security deposit, or \$687.50.

I further award the tenant recovery of the filing fee she paid for this application as the landlord chose to do nothing with respect to the security deposit upon receiving the decision of September 17, 2019 I am of the view a reasonably prudent landlord would have taken action to refund the deposit to the tenant in a timely manner or file an Application for Review Consideration.

In light of all of the above, I provide the tenant with a Monetary Order in the sum of \$787.50 which represents the return of her security deposit, in the single amount of \$687.50, plus \$100.00 for recovery the filing fee.

### Conclusion

The tenant is provided a Monetary Order in the sum of \$787.50 to serve and enforce upon the landlord.

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: January 29, 2020

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Residential Tenancy Branch