



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD MNDC FF

### **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 effectively for the return of their security deposit, compensation pursuant to Section 38 of the Act, for loss in respect to a mail charge, 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 landlord acknowledged receiving the tenant's application and evidence; and the tenant acknowledged receiving the evidence of the landlord. The parties were provided opportunity to mutually resolve their dispute to no avail. The hearing proceeded on the merits of the tenant's application. 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?

### **Background and Evidence**

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

The tenancy began October 01, 2016 and was guided by a written tenancy agreement. The parties agreed the tenancy ended July 31, 2019. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1050.00 which the parties agreed the landlord returned a portion and still retains a portion in trust.

The landlord acknowledged they did not conduct a *move in* or *move out* inspection with the tenant in accordance with the Act and that at the end of the tenancy the parties did not agree as to the administration of the tenant's deposit. The parties agree the tenant

provided the landlord their written forwarding address by registered mail sent on August 06, 2019 to the landlord's address for service, which the landlord received August 08, 2019.

The landlord testified they determined the tenant was at least responsible for some cleaning of the rental unit and deducted from the security deposit the amount of \$110.00 for professional cleaning and returned to the tenant the amount of \$940.00 on or about August 15, 2019. The tenant did not agree they left the rental unit unclean and determined they were owed the full return of their deposit, which they seek by their application.

The tenant also seeks the cost of the registered mail sent the landlord in the amount of \$11.28 for which they submitted a receipt.

### **Analysis**

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

I find the tenant's use of registered mail service in providing the landlord a forwarding address in writing as arbitrary. The Act does not solely mandate registered mail in this type of matter. It was available to the tenant to utilize other methods as prescribed within Section 88 of the Act. I find the landlord is not responsible for the tenant's choice of delivery for their written forwarding address. Therefore, this portion of the tenant's claim is **dismissed**.

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 *the landlord's right to claim against the security or pet damage deposit is extinguished* – therefore leaving the landlord solely an obligation to return to the tenant their security deposit in full upon receiving the tenant's forwarding address. *It must be noted that returning the deposit(s) does not preclude the landlord from making separate application for damage or loss to the unit within the time permitted pursuant to Section 60(1) of the Act (2 years from the end of the tenancy).*

In this matter I find **Section 38(1)** of the Act provides that the landlord must return the deposit(s) of the tenancy or apply for dispute resolution if they have 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 August 08, 2019 and under the circumstances of this matter, being precluded from making a claim against the security deposit, I find the

landlord sole recourse was an obligation to repay any deposit in its entirety within 15 days thereafter. However, the landlord returned solely a portion of the deposit and retained the balance without the tenant's agreement. As a result, the Act prescribes pursuant to **Section 38(6)** that the landlord **must** pay the tenant *double* the amount of a deposit as applicable.

I find the tenant is entitled to compensation prescribed by **Section 38(6)** of the Act requiring the landlord to pay the tenant *double* the amount of their original security deposit in the sum of \$2100.00. There is no applicable interest assigned to the deposit in this matter. I deduct from the tenant's entitlement the amount of \$940.00 already returned by the landlord, for a net award to the tenant in the amount of \$1160.00. As the tenant was successful in their application, they are entitled to recover their filing fee of \$100.00, for a total monetary order to the tenant in the sum of \$1260.00. As a result,

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$1260.00**. 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 has been 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: January 07, 2020

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Residential Tenancy Branch