



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on October 8, 2019, wherein the Tenant requested return of double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on February 18, 2020. 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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Tenant named the Landlord's Principle Manager, M.T., as the Landlord on her Application. The tenancy agreement provided in evidence confirmed the Tenant was between the Tenant and two limited companies. Section 64(3)(c) of the *Residential Tenancy Act* allows me to amend an Application for Dispute Resolution; as such, I amend the Tenant's Application to accurately name the corporate Landlords.

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. Is the Tenant entitled to return of double the security deposit paid?
2. Should the Tenant recover the filing fee?

### Background and Evidence

This tenancy began March 1, 2019. Monthly rent was \$1,525.00 and the Tenant paid a security deposit of \$762.50.

The tenancy ended on July 31, 2019. Introduced in evidence was a copy of the signed Mutual Agreement to End Tenancy. The Landlord's representative confirmed that the rental unit was re-rented immediately following the end of the tenancy.

The Tenant provided her forwarding address to the Landlord by letter dated August 29, 2019. The Landlord confirmed receiving the Tenant's forwarding address at that time.

The Landlord returned one half of the security deposit by letter dated July 31, 2019. The Tenant testified that she did not agree to the Landlord retaining the other half of her deposit. The Landlord's representative testified that the Tenant agreed to this by text message; those messages were not in evidence before me. The Landlord's representative further testified that had the Tenant not agreed to the Landlord retaining one half of her deposit, they would not have agreed to her breaking her lease.

### Analysis

The Tenant applies for return of double the security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that she did not agree to the Landlords retaining any portion of her security deposit. The Landlord's representative submitted that the Tenant

agreed the Landlords could retain half the deposit as she was ending her tenancy early. He testified that the Tenant agreed to this by text message; these messages were not in evidence. The Tenant denied such an agreement existed. To confirm the end of the tenancy the parties signed a Mutual Agreement to End Tenancy. Had the end of the tenancy been contingent on the Tenant agreeing to relinquish half her deposit, as claimed by the Landlord's representative, presumably this would have been noted on the Mutual Agreement. On balance, I find it more likely that the Tenant did not agree to the Landlord retaining any portion of her deposit.

The evidence indicates the Landlord also did not perform a move in condition inspection report; pursuant to section 24(2) of the *Act*, the Landlords have extinguished their right to claim against the deposit.

I find that the Landlords received the Tenant's forwarding address in writing on August 29, 2019.

The Landlords failed to return the Tenant's security deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

Security deposits are trust funds and are held in trust for the benefit of the Tenant by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. In this case, I find the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

In this case the Landlords returned one half of the deposit. In such situations, 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 x 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 x 2 = \$600 less amount actually returned \$250).

I find the case before me most closely resembles Example A, as the Landlord held back a portion of the Tenant's deposit without her consent. As such, I find the Tenant is entitled to the sum of **\$1,143.75** calculated as follows:

$\$762.50 \text{ (original deposit)} \times 2 = \$1,525.00 - \$381.25 \text{ (amount returned)} = \$1,143.75.$

As the Tenant has been successful in her Application I also find she is also entitled to recovery of the \$100.00 filing fee for a total award of **\$1,243.75**.

### Conclusion

The Tenant's application for return of double their security deposit and recovery of the filing fee is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$1,243.75**. The Tenant must serve a copy of the Order on the Landlords as soon as possible, and should the Landlords fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

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: February 19, 2020

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Residential Tenancy Branch