



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMBER PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on November 17, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and provided affirmed testimony. The Landlord was not represented at the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by Xpresspost on March 2, 2020. Canada Post documents and tracking information submitted into evidence confirm service in this manner at the Landlord's address for service as provided on a condition inspection report that was submitted into evidence. The Tenant testified he was not aware the documents should have been served earlier. However, pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act* and that the Landlord had adequate opportunity to respond to the Tenant's claim.

The Tenant was given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant testified the tenancy began on July 1, 2017 and ended on July 31, 2019. During the tenancy, rent was due in the amount of \$988.00 per month. The Tenant paid a security deposit in the amount of \$475.00. The Tenant testified that a partial repayment of \$290.00 was received on or about November 15, 2019 but that the balance has been retained by the Landlord.

The Tenant testified that a forwarding address was provided to the Landlord in writing during the move-out condition inspection which occurred on July 31, 2019. A copy of the signed condition inspection report was submitted into evidence. The condition inspection report confirms there was “[n]o damage to the unit” at the end of the tenancy.

An agent of the Landlord did not attend the hearing to dispute the Tenant’s evidence.

### Analysis

Based on the unchallenged documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant’s forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the tenancy ended on July 31, 2019 and that the Tenant’s forwarding address in writing was provided to the Landlord on that date. As a result, I find the Landlord has until August 15, 2019 to deal with the security deposit in accordance with section 38 of the *Act*. That is, subject to any agreement between the parties, the Landlord was obligated to return the security deposit to the Tenant or make a claim

against it by filing an application for dispute resolution with the Residential Tenancy Branch. There is no evidence before me that the Landlord made an application for dispute resolution or returned the security deposit in full. Rather, the Tenant testified, and I accept, that the Tenant received a partial repayment of \$290.00 on or about November 15, 2019, well after the forwarding address was received. Therefore, pursuant to section 38(6) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit held.

Policy Guideline #17 provides examples which illustrate different ways in which a security deposit may be doubled. In this case, I find the following example to be most appropriate:

*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 ( $\$800 - \$275 = \$525$ ).*

[Reproduced as written.]

Considering the above, I find it appropriate to order that the Tenant is entitled to recover double the amount paid as a security deposit ( $\$475.00 \times 2 = \$950.00$ ), less the amount already returned to the Tenant (\$290.00), which totals \$660.00 ( $\$950.00 - \$290.00$ ). I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. Therefore, the Tenant is granted a monetary order in the amount of \$760.00, which is comprised of \$660.00 in recovery of the security deposit and \$100.00 in recovery of the filing fee.

### Conclusion

The Tenant is granted a monetary order in the amount of \$760.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: April 14, 2020

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Residential Tenancy Branch