



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSDS-DR

### Introduction:

The Tenant filed an application for the return of her security deposit via the Direct Request Process. A Residential Tenancy Branch Adjudicator concluded that this application should be considered at a participatory hearing.

A hearing was convened on May 29, 2020 to consider the Tenant's application to recover the security deposit. That hearing was adjourned for reasons outlined in my interim decision of May 29, 2020.

In my interim decision of May 29, 2020, the Tenant was directed to re-serve the Landlord with the Dispute Resolution Package and all of the evidence she submitted to the Residential Tenancy Branch, by email. The Tenant stated that these documents were served to the Landlord on June 02, 2020, by email. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In April of 2020 the Landlord submitted evidence to the Residential Tenancy Branch. In my interim decision of May 29, 2020, the Landlord was directed to serve the Landlord's evidence to the Tenant, by email. The Landlord stated that these documents were served to the Tenant on June 06, 2020, by email. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 07, 2020 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, by email, on June 07, 2020. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. At both hearings the parties affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

### Preliminary Matter

The Landlord and the Tenant were advised that the only issue in dispute at these proceedings is whether the Landlord complied with section 38 of the *Residential Tenancy Act (Act)* when the Landlord retained the security deposit.

The Landlord and the Tenant were advised, on several occasions, that any allegations that the rental unit was not returned in a clean and undamaged state would not be considered at these proceedings.

The Landlord and the Tenant were advised that the Landlord has the right to file an Application for Dispute Resolution claiming compensation for damage to the unit, at which time it would be determined if the rental unit was returned in a clean and undamaged state.

In spite of these instructions, the Landlord repeatedly prevented from providing testimony regarding the state of the unit at the end of the tenancy

### Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

### Background and Evidence:

The Landlord and the Tenant agree that:

- a security deposit of \$2,750.00 was paid;
- this tenancy ended on February 29, 2020;
- the Tenant provided a forwarding address, in writing, on February 29, 2020 by writing it on the final condition inspection report;
- the Tenant did not authorize the Landlord, in writing, to retain any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit within fifteen days of the tenancy ending and the Landlord receiving the forwarding address;
- the Landlord gave the Tenant a cheque, in the amount of \$1,500.00 on March 02, 2020, which was to be a partial security deposit refund; and
- the Landlord subsequently cancelled the cheque for \$1,500.00.

The Landlord stated that after he wrote the cheque for \$1,500.00, he telephoned the Residential Tenancy Branch and was told that he could retain the security deposit in compensation for damages to the rental unit.

Analysis:

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

I have placed no weight on the Landlord's submission that he was told by the Residential Tenancy Branch that he could retain the security deposit in compensation for damages to the rental unit. The Landlord has submitted no evidence to corroborate this testimony and I find it highly unlikely that he would have been provided with that information, given that it directly contradicts section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$5,500.00, which is double the security deposit, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: June 29, 2020