



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the tenant with an opportunity to ask questions. The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 29, 2020 to the landlord's residential address; the documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on August 3, 2020., 2019.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution as testified.

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Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return double the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified that the parties entered into a fixed term tenancy agreement on April 3, 2016 which became a month-to-month tenancy at the end of the term. A copy of the tenancy agreement was submitted as evidence. Rent was \$2,100.00 monthly payable on the first of the month.

At the beginning of the tenancy, the tenant provided two security deposits and a pet deposit each in the amount of \$975.00 for a total of \$2,925.00 ("the deposit"). The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified they vacated on May 31, 2020. The tenant testified she provided a forwarding address by text on April 1, 2020 and then by registered mail sent on April 4, 2020. The tenant provided the tracking number referenced on the first page.

The tenant testified that the parties did not carry out a condition inspection on moving in and moving out. A copy of a report was not submitted. The tenant testified the landlord claimed a cleaning expense of \$800.00 although he did not provide a receipt. The landlord made a partial return of the deposit of \$1,100.00 outside of the 15-day period. The tenant stated that the landlord has not brought an application to keep any of the deposit.

The tenant requested a monetary award of double the deposit for the landlord's failure to return the deposit within 15 days of the provision of the forwarding address, less the partial payment of \$1,100.00. The tenant requested reimbursement of the filing fee.

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Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value the deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*. I find the tenant provided a deposit of \$2,925.00.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence supported by the tracking number that the tenant gave the landlord written notice of their forwarding address on April 4, 2020 which is deemed received by the landlord 5 days later under section 90, that is, on April 9, 2020.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary award of double the security deposit as well as reimbursement of the filing fee, less the payment made of \$1,100.00 for a total monetary order of **\$4,850.00**.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Deposit	\$2,925.00
Doubling of security deposit - section 38(6)	\$2,925.00
Reimbursement of filing fee – section 72	\$100.00
(Less Refund)	(\$1,100.00)
Monetary Award	\$4,850.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$4,850.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Courts of the Province of British Columbia to be 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: September 01, 2020

Residential Tenancy Branch