



Dispute Resolution Services

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 email dated July 7, 2020 to the landlord's customary email address and as well by registered mail sent on July 9, 2020 to the landlord's residential address. The tenant obtained an Order for Substituted Service on September 8, 2020 allowing the landlord to serve the documents by sending via WhatsApp; the landlord sent the documents to the landlord on September 8, 2020, copies of the messages being submitted as evidence.

The tenant provided the Canada Post Tracking Number in support of service by registered mail to which I refer on the cover page. Considering the landlord's testimony and supporting evidence, I find the tenant served the landlord as required by the Act with the Notice of Hearing and Application for Dispute Resolution by WhatsApp on September 8, 2020.

- Issue(s) to be Decided

Is the tenant entitled to the following:



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- 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.

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 March 5, 2020 which ended on April 18, 2020; the tenant vacated on April 18, 2020. Rent was \$3,000.00 monthly payable on the first of the month. The tenant submitted a copy of the agreement.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$2,000.00. The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified he provided a forwarding address to the landlord by registered mail send on May 21, 2020, the tracking number for which appears on the first page. Following an Order for Substituted Service, the landlord served the forwarding address through WhatsApp on May 16, 2020 and submitted a copy of the text.

The tenant testified that the parties did not carry out a condition inspection on moving in and moving out.

The tenant testified that after he vacated, the landlord claimed the tenant left smudges on the walls and the unit needed other minor repairs. Copies of the exchange of texts in which the landlord claimed reimbursement and the tenant requested the return of the security deposit were submitted by the tenant as evidence. 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. 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 \$2,000.00.

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 credible testimony supported by documentary evidence and find the tenant served the landlord with the forwarding address on May 16, 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, for a total monetary order of **\$4,100.00**.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Deposit	\$2,000.00
Doubling of security deposit - section 38(6)	\$2,000.00
Reimbursement of filing fee – section 72	\$100.00
Monetary Award	\$4,100.00



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Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$4,100.00**.

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 18, 2020

Residential Tenancy Branch