



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of their security deposit; and
- recovery of the filing fee.

The tenant and landlord JS attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence in advance of the hearing and no issues were raised with regard to the service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package).

The parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the amount of her security deposit and recovery of her filing fee?

### Background and Evidence

The tenant submitted that the tenancy began on February 15, 2018, that the monthly rent at the beginning and end of the tenancy was \$2,500.00 and she paid a security deposit of \$1,250.00.

The tenant also submitted that she paid a pet damage deposit of \$500.00; however, this deposit is not part of her claim.

The tenant said that she vacated the rental unit on May 1, 2020.

The tenant testified she provided her forwarding address in a text message on May 17, 2020, and she did not sign over any portion of the deposit.

In response to my inquiry, the tenant said she primarily communicated with the landlord through text messages and emails during the tenancy.

The tenant submitted that the landlord has not returned the security deposit, which caused the application to be filed. The tenant is now requesting that their security deposit be returned.

In response, the landlord confirmed receiving the tenant's forwarding address in a text message on May 17, 2020, that they have not returned any portion of the security deposit, did not have authority to retain any portion of the tenant's security deposit, and have not applied for dispute resolution claiming against the security deposit.

The parties agreed that there was not a move-in or move-out condition inspection report (CIR).

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the

requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

Tenancy Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the security deposit, either on an application for the return of the security deposit or at the hearing, the arbitrator will order the return of double the security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on May 1, 2020, and that the landlord received the tenant's forwarding address in a text message on May 17, 2020.

Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlords in this case, must be given or served in the ways listed in this section of the Act. Text message communication is not an approved method of delivery of those documents under the Act.

Section 71(2)(C) of the Act states that I may order a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

In this case, due to the landlord's confirmation that the parties primarily communicated by text message and emails, and that they received the tenant's forwarding address in a text message on May 17, 2020, I order that the forwarding address was sufficiently served under the Act.

Due to the above, I find the landlords were obligated to return the tenant's security deposit, in full, or make an application for dispute resolution claiming against the security deposit by June 1, 2020, 15 days after they received the forwarding address. In contravention of the Act, the landlords kept the security deposit, without filing an application claiming against it.

Although the tenants did not claim an amount equivalent to double the security deposit on the application, the tenant did not specifically waive the entitlement to double the amount. I therefore find that the tenant is entitled to return of her security deposit and that I must double this amount.

Due to her successful application, I grant the tenant recovery of her filing fee of \$100.00.

For the above reasons, I find the tenant has established a monetary claim for a total monetary award of \$2,600.00, comprised of her security deposit of \$1,250.00, doubled to \$2,500.00 and the filing fee of \$100.00.

### Conclusion

I issue the tenant a monetary order in the amount of \$2,600.00.

Should the landlords fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlords are cautioned that costs of such enforcement are recoverable from the landlords.

The tenant's application for monetary compensation is granted as she has been given a monetary award in the amount of \$2,600.00 as noted above.

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 29, 2020

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Residential Tenancy Branch