



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 25, 2020 (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
- an order granting recovery of the filing fee.

The Tenant and the Landlord D.N. attended the hearing at the appointed date and time. At the beginning of the hearing, the Landlord acknowledged receipt of the Tenant's application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord confirmed that he has not submitted any documentary evidence in preparation for the hearing.

The parties were given an 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, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following: the tenancy began on January 3, 2019. During the tenancy, the Tenant was required to pay rent in the amount of \$1,250.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$625.00 and a pet damage deposit in the amount of \$625.00, both of which the Landlords continue to hold. The tenancy ended on September 26, 2020.

The Tenant testified that she served the Landlords with her forwarding address in person on September 29, 2020. The Landlord confirmed receipt on September 29, 2020. The Tenant stated that she did not consent to the Landlords retaining her deposits and the Landlord confirmed that he has not yet applied to retain the Tenant's deposit and has not returned any portion of the Tenant's deposits to the Tenant. The Landlord stated that he felt entitled to retaining the deposits as the Tenant did not provide the Landlords with sufficient notice to end tenancy.

### Analysis

Based on the documentary evidence before me for consideration 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 a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I accept that the Tenant vacated the rental unit on September 26, 2020 and provided the Landlords with her forwarding address in person on September 29, 2020. The Landlord confirmed receipt of the Tenant's forwarding address on the same date.

As there is no evidence before me that that the Landlords were entitled to retain any portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlords had until October 14, 2020 to repay the

deposits or make an application for dispute resolution if they felt entitled to retaining the Tenant's deposits. During the hearing, the Landlord stated that he did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security and pet damage deposits paid to the Landlords ( $\$1,250.00 \times 2 = \textbf{\$2,500.00}$ )

Having been successful, I also find the Tenant is entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$2,600.00**.

### Conclusion

The Landlords breached Section 38 of the Act. The Tenant is granted a monetary order in the amount of \$2,600.00. 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: February 18, 2021

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Residential Tenancy Branch