



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the “*Act*”) and dealt with an Application for Dispute Resolution filed by the Tenant for a monetary order for the return of the security deposit and/or the pet damage deposit, and for the recovery of the filing fee.

The Tenant submitted a signed Proof of Service - Tenant's Notice of Direct Request Proceeding which declares that the Tenant served with Landlord with the Notice of Direct Request Proceeding and supporting documents by registered mail on February 6, 2021, which service was witnessed by H.S.L. The Tenant provided a copy of a Canada Post receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the Tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received these documents on February 11, 2021, five days after they were mailed.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation for the return of a security deposit and/or a pet damage deposit pursuant to sections 38 and 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on March 7, 2020, indicating a monthly rent of \$2,450.00 and a security deposit of \$2,450.00, for a tenancy commencing on September 1, 2020;
- A copy of a letter from the Tenant to the Landlord dated January 8, 2021 confirming receipt of \$1,450.00 and requesting the return of \$1,000.00, and providing a forwarding address in writing (the "Forwarding Address Letter");
- A copy of Canada Post receipts, including the Tracking Number, in support of service of the Forwarding Address Letter by registered mail on January 8, 2021;
- A copy of a bank statement confirming an e-transfer of \$2,450.00 to the Landlord on March 9, 2020;
- A copy of a Proof of Service - Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the Notice of Forwarding Address was provided to the Landlord by registered mail January 8, 2021; and
- A copy of a Tenant's Direct Request Worksheet dated January 30, 2021 showing the amount of the security deposit paid (\$2,450.00), the amount returned to the Tenant (\$1,450.00), the amount outstanding (\$1,000.00) and the date the tenancy ended (December 21, 2020);

### Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposits in full or make an application for dispute resolution claiming against the deposits.

Section 38(6) of the *Act* states that if the landlord does not return the deposits or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposits.

I have reviewed all documentary evidence and I find that the Tenant paid a security deposit in the amount of \$2,450.00, as per the tenancy agreement and the bank statement referred to above.

I accept the following declarations made by the Tenant on the Tenant's Direct Request Worksheet:

- The Tenant has not provided consent for the Landlord to keep all or part of the security deposit and pet damage deposit;
- There are no outstanding monetary orders against the Tenant for this tenancy; and
- The Tenant has not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the Tenant's statement on the Tenant's Direct Request Worksheet that the tenancy vacated the rental unit on December 21, 2020.

In accordance with sections 88 and 90 of the *Act*, I find that the Landlord is deemed to have received the Tenant's forwarding address in writing on January 13, 2021, five days after it was sent to the Landlord by registered mail.

I accept the evidence before me that the Landlord has failed to return the full amount of the security deposit to the Tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit by January 28, 2021, within the fifteen days granted under section 38(1) of the *Act*.

I also accept that the Landlord returned only \$1,450.00 to the Tenant and retained \$1,000.00 as per the Tenant's Direct Request Worksheet and has not filed an Application for Dispute Resolution requesting to retain the security deposit.

Based on the foregoing, I find that the Landlord must pay the Tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Policy Guideline #17 provides examples to help calculate the amount of the security deposit payable to a tenant. In this case, I find the following example most like the current circumstances:

*Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.*

*The arbitrator doubles the amount paid as a security deposit (\$400 x 2 = \$800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 (\$800 - \$275 = \$525).*

[Reproduced as written.]

In accordance with the example provided above, I find the Tenant is entitled to a monetary award in the amount of \$3,450.00 which has been calculated as follows:

$$\begin{aligned} & \$2,450.00 \times 2 = \$4,900.00 \\ & \$4,900.00 - \$1,450.00 = \$3,450.00 \end{aligned}$$

As the Tenant was successful in this application, I find that they are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenant a monetary order in the amount of \$3,550.00 for the return of double the security deposit and for the recovery of the filing fee for this application. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (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 26, 2021

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Residential Tenancy Branch