



# 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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed testimony. The landlord did not or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on January 18, 2021 and has submitted a copy of the Canada Post Customer Receipt and Tracking label. The tenant also stated that the tenant's submitted documentary evidence was served to the landlord on December 20, 2020 via Canada Post Registered Mail. I accept the undisputed testimony of the tenant and find that the landlord has been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

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

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement. The monthly rent was \$825.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$400.00 was paid.

The tenant seeks a monetary claim of \$500.00 which consists of:

\$400.00	Return of Security Deposit
\$100.00	Filing Fee

The tenant stated that a handwritten letter was given to the landlord as notice to end the tenancy for October 31, 2020 dated September 29, 2020 which also requested the return of the \$400.00 security deposit and provided his new mailing address. The tenant confirmed that this letter was served to the landlord by placing it in the landlord's mailbox on September 29, 2020. The tenant also stated that the same letter was again served to the landlord as part of his submitted documentary evidence via Canada Post Registered Mail on December 20, 2020.

The tenant also stated that the address used for service was the rental building address as the landlord lives upstairs of the basement rental unit.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of the tenant and find that the tenant did provide his forwarding address in writing in the letter dated September 29, 2020 requesting the return of the \$400.00 security deposit to the landlord. The same letter was that notice to end the tenancy on October 31, 2020. I also find based upon the undisputed evidence of the tenant that the same letter was also served to the landlord as part of the evidence package on December 20, 2020 via Canada Post Registered Mail. As such, I find that the tenant is entitled to return of the original \$400.00 security deposit.

However, section 38(6) also speaks to the landlord's requirement in complying with section 38(1) which is to return the security deposit or file an application to dispute its

return to the tenant within the allowed 15 day period. As the landlord has not returned the security deposit nor filed an application to dispute its return the landlord is liable to an amount equal to the \$400.00 security deposit.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$900.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and 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: March 16, 2021

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Residential Tenancy Branch