



# 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:

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Tenant testified that the hearing package, Interim Decision and evidence was served on the Landlord on April 6, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the

Landlord was deemed served with the NoDRP package five days after mailing them on April 11, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order for the return of the security deposit?
2. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

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

The Tenant confirmed that this tenancy began as a fixed term tenancy on July 1, 2019. The fixed term ended on June 30, 2020, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,400.00 payable on the first day of each month. A security deposit of \$1,200.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant testified that the tenancy ended on April 1, 2020. The Tenant stated she also served her forwarding address on the Landlord on May 5, 2020. The letter containing the Tenant's forwarding address had this note on the bottom, "*I would appreciate you returning the book on Portugal that I lent you. Thanks.*" The Landlord returned the book to the Tenant at her forwarding address.

The Tenant testified that a move-in condition inspection report was not done at the beginning of the tenancy, and a move-out condition inspection report was not done at the end of the tenancy.

The Tenant did not receive a notice for dispute resolution from the Landlord that she was seeking to claim against the Tenant's security deposit.

The Tenant sent a text message to the Landlord that she could keep \$200.00 of the security deposit to go towards cleaning, but the Landlord never responded to the message. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

## Analysis

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in Sections 38(2) to 38(4) of the Act.

I accept the undisputed testimony of the Tenant and based on this, as well as the documentary evidence submitted, I find the following:

- The tenancy ended April 1, 2020.
- The Tenant's forwarding address was provided to the Landlord in writing on May 5, 2020 and the Landlord received this correspondence.

May 5, 2020 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from May 5, 2020 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of May 5, 2020. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(3) to 38(4) of the Act state:

38 (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*

- (a) *the director has previously ordered the tenant to pay to the landlord, and*
  - (b) *at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
  - (a) *at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...*

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4)(a) of the Act does not apply.

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit and that none of the exceptions outlined in Sections 38(3) to 38(4)(a) of the Act apply. The Landlord did not conduct move-in or move-out condition inspections with the Tenant and therefore extinguished her rights in relation to the security deposit pursuant to Sections 24(2) and 36(2) of the Act. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to Section 38(6) of the Act.

The Landlord must return **\$2,400.00** to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in her application, I award the Tenant reimbursement for the **\$100.00** filing fee pursuant to Section 72(1) of the Act.

In total, the Tenant is entitled to \$2,500.00 and I issue the Tenant a Monetary Order for this amount.

For the benefit of the Tenant, she may wish to discuss with an Information Officer at the RTB the options available to her to properly serve legal documents on the Landlord for this matter. An Information Officer can be reached at:

5021 Kingsway  
Burnaby, BC  
Phone: 250-387-1602 / 1-800-665-8779  
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

### Conclusion

The Tenant is issued a Monetary Order for \$2,500.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in the Small Claims division of the Provincial Court 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: October 24, 2022

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Residential Tenancy Branch