



# 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 an Application for Dispute Resolution (the Application) by direct request that was filed by the Tenant on July 11, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- The return of double the amount of their security deposit; and
- Recovery of the filing fee.

The ex parte proceeding was commenced, and a decision was made on August 24, 2022, that a participatory hearing would be required. The participatory hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 6, 2023, and was attended by the Tenant, the Tenant's agent/interpreter H.W., the Landlord, the landlord's spouse K.S., and the Landlord's agent/interpreter E.S. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

Although the Landlord acknowledged receipt of the Tenant's documentary evidence, the Landlord's Agent stated that they did not send the documentary evidence before me on behalf of the Landlord to the Tenant as they did not know that this was a requirement. As a result, I have accepted only the documentary evidence before me from the Tenant for consideration, as well as a written statement of submissions from the Landlord which was read verbatim by the Landlord's Agent at the hearing. All other documentary evidence from the Landlord has been excluded from consideration as it was not served on the Tenant as required.

Although the parties were advised several times during the hearing that settlement pursuant to section 63 of the Act was an option, a settlement agreement was not reached between them, and I therefore rendered a decision under the authority granted to me by the Director of the Residential Tenancy Branch (the Branch) under section 9.1(1) of the Act.

### Issue(s) to be Decided

Is the Tenant entitled to the return of double the amount of their security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The parties agreed that the Tenant vacated the rental unit on July 31, 2021, and although the Landlord's Agent stated that keys were not returned until August 14, 2021, the Tenant's Agent denied this statement, stating that they were returned at the time the tenancy ended on July 31, 2021. The parties agreed that rent at the start of the tenancy

was \$2,250.00, as set out in the written tenancy agreement before me, and that a \$1,125.00 security deposit was required and paid, which the Landlord still holds.

Although the parties disputed whether a move-in condition inspection was completed, they agreed that no move-in inspection report was completed and that a move-out condition inspection was neither scheduled by the Landlord, nor completed with both of the parties. The Tenant's Agent stated that the Tenant's forwarding address was sent to the Landlord via the RTB-47 (Tenant's Notice of Forwarding Address for the Return of Security and/or Pet damage Deposit) by registered mail on September 2, 2021, and provided me with the registered mail tracking number, registered mail receipt, a copy of the RTB-47, and the RTB-41 (Proof of Service form for Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit). At the hearing the Landlord's Agent acknowledged receipt of the registered mail containing the Tenant's forwarding address by the Landlord on September 5, 2021.

The Tenant's Agent stated that as the Landlord received the Tenant's forwarding address and neither returned the security deposit nor filed a claim against it, the Tenant is entitled to the return of double its amount. The Landlord's Agent stated that the Tenant moved out of their own volition without providing proper notice under the Act, did not pay rent for July of 2021, and did not clean the rental unit at the end of the tenancy. The Landlord's Agent stated that due to the lack of cleaning and unpaid rent, the security deposit was withheld. The Landlord's Agent stated that as the Landlord and Tenant have children at the same school, and they have mutual friends, they did not want to cause a big conflict by filing an application with the Branch. Although the Tenant's Agent agreed that the Tenant ended their tenancy, they stated that they did so because the Landlord had advised them that they were planning to sell their house. The Landlord's Agent responded by stating that they advised the Tenant of this as a courtesy, as there would be open houses, and that no notice to end tenancy was served by the Landlord on the Tenant under section 49 of the Act, therefore the Tenant was not entitled to one month's free rent.

Despite the above, the parties agreed that none of the circumstances set out under sections 38(3) or 38(4) of the Act apply.

### Analysis

Section 38(1) of the Act states that except as provided in subsection (3) or (4)(a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives

the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the affirmed testimony of the parties at the hearing, I am satisfied that the Landlord neither filed a claim against the security deposit nor returned any portion of the security deposit to the Tenant. I am also satisfied that the Landlord received the Tenant's forwarding address in writing on September 5, 2021. Although the parties disagreed about whether the tenancy ended on July 31, 2021, the date the parties agree that the Tenant vacated the rental unit, or August 14, 2021, the date the Landlord argued that the keys were returned, I am satisfied that the Landlord did not comply with section 38(1) of the Act, regardless of whether the tenancy ended on July 31, 2021, or August 14, 2021, as the Tenant's forwarding address was received by the Landlord after both of those dates and still the Landlord failed to either return the deposit or file a claim against it with the Branch.

As there was no evidence before me that the Tenant extinguished their right to the return of their deposit, I find that they did not. As a result, and as the parties agreed that the circumstances set out under sections 38(3) and 38(4)(a) of the Act do not apply, I therefore find that the Landlord was required to either return the security deposit to the Tenant or file a claim against it with the Branch, by September 20, 2021. As the Landlord did neither, I therefore find that the Tenant is entitled to double its original amount of \$1,125.00, plus \$0.60 in interest calculated in accordance with the regulations and Residential Tenancy Policy Guideline (Policy Guideline) #17, pursuant to section 38(6) of the Act. I therefore grant the Tenant's Application seeking double the amount of their security deposit, \$2,250.00, plus the \$0.60 in interest owed on the original security deposit amount up to and including today's date, for a total amount of \$2,250.60. As the Tenant was successful in their claim, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary order in the amount of \$2,350.60, and I order the Landlord to pay this amount to the Tenant.

### Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$2,350.60**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

At the hearing the Landlord and their Agent argued that the Tenant owes the Landlord rent and cleaning costs. The Landlord remains entitled to file a claim against the Tenant for these matters, should they wish to do so, up to two years after the end date for the tenancy.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: January 9, 2023

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Residential Tenancy Branch