



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This matter was initiated as a result of the Tenant's Application for Dispute Resolution by Direct Request made on August 16, 2022, pursuant to section 38.1 of the Residential Tenancy Act (the Act). However, the matter was subsequently set to proceed by way of a participatory hearing at 1:30 p.m. on January 12, 2023.

The Tenant applies for the following relief, pursuant to the Act:

- a monetary order for the return of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by email, in accordance with an order for substituted service dated August 31, 2022. A copy of an email to the Landlord dated August 31, 2022, sent to the address approved in the order for substituted service, was submitted into evidence. Pursuant to section 89(1) of the Act and sections 43 and 44 of the Residential Tenancy Regulation, documents served in this manner are deemed to be received three days later. I find these documents are deemed to have been received by the Landlord on September 3, 2022.

The Tenant was 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 and to which I was referred. 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 the return of a security deposit?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant testified there was no written tenancy agreement between the parties. However, she testified that she moved into the rental unit on July 5, 2022 and moved out of the rental unit on July 13, 2022. She testified that rent of \$850.00 per month was due each month. A copy of a receipt confirming payment of \$850.00 to the Landlord on July 1, 2022, was submitted in support. The Tenant also testified that she paid a security deposit of \$600.00, which the Landlord holds. A copy of a receipt confirming payment of \$600.00 to the Landlord on June 18, 2022, was submitted in support.

The Tenant testified that the Landlord was provided with a forwarding address in writing on July 25, 2022. A copy of an email to the Landlord dated July 25, 2022 was submitted in support. The Tenant confirmed that the email containing her forwarding address was sent to the same email address used by the Landlord to send her a message on July 21, 2022. The Tenant submitted a copy of the email from the Landlord, in which he states that a bill for “dog daycare” would be deducted from the security deposit. The Tenant confirmed that the security deposit has not been returned by the Landlord.

The Tenant testified that the Landlord did not complete move-in or move-out condition inspections.

### Analysis

Based on the unchallenged documentary evidence 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 an application to keep 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 do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

In this case, I find the Tenant provided the Landlord with a security deposit of \$600.00 on June 18, 2022. I also find the Tenant provided the Landlord with a forwarding address by email on July 25, 2022. Pursuant to section 88 of the Act and sections 43 and 44 of the Regulations, I find the Landlord is deemed to have received the Tenant's forwarding address on July 28, 2022. As a result, pursuant to section 38(1) of the Act, the Landlord had until August 12, 2022 to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. I find the Landlord did not repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution in accordance with section 38(1) of the Act.

Considering the above, and pursuant to section 38(6) of the Act, I find the Tenant is entitled to receive double the amount of the security deposit held by the Landlord, which is \$1,200.00 (\$600.00 x 2). Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the application.

The Tenant is granted a monetary order for \$1,300.00, which is comprised of \$1,200.00 for the return of the security deposit and \$100.00 in recovery of the filing fee.

### Conclusion

The Tenant is granted a monetary order in the amount of \$1,300.00. The order must be served on the Landlord. The 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: January 13, 2023

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Residential Tenancy Branch