



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSD**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package served by posting the notice on the Landlord's door on May 22, 2022, the Landlord confirmed receipt, sufficiently served on May 25, 2022; and,
- the Landlord's evidence package served by registered mail on December 12, 2022, the Tenant confirmed receipt, Canada Post Tracking Number on cover sheet of decision, deemed served on December 17, 2022.

Pursuant to Sections 71, 88, and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issue to be Decided

Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?

Background and Evidence

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

The parties confirmed that this periodic tenancy began on November 21, 2021. Monthly rent was \$900.00 payable on the first day of each month. A security deposit of \$450.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant testified that the tenancy ended on May 1, 2022. The Landlord testified that the Tenant moved out of the rental unit on April 14 or 15, 2022.

The Tenant said he gave his forwarding address to the Landlord in writing on April 19, 2022. The Landlord confirms receipt of the Tenant's forwarding address which he posted on her door. The Tenant stated he did not know his PO Box number when he gave his forwarding address to the Landlord. The Landlord emailed the Tenant on December 12, 2022 stating that the person at the post office told her that the Tenant's address "*most likely needs a Post Office Box Number*". The Tenant replied to the Landlord just over an hour later writing out his PO Box number. The Landlord was then able to serve her evidence on the Tenant of which the Tenant confirms receipt.

The Landlord did not apply to the RTB to keep the security deposit.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

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.

The Tenant stated he did a move-in condition inspection with the Landlord, but the Landlord did not organize a move-out condition inspection with the Tenant. The Tenant just vacated the unit and minimally communicated with the Landlord.

The Landlord submitted correspondence between the parties.

### Analysis

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 parties' testimonies of the end of tenancy and receipt of the Tenant's forwarding address. I find the following:

- The tenancy ended April 15, 2022.
- The Tenant's forwarding address was provided to the Landlord in writing and the Landlord received final clarifying information for this on December 12, 2022.

December 27, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from December 12, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit.

I find the Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of December 12, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(2) to 38(4) of the Act state:

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- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (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 Tenant participated in a move-in condition inspection with the Landlord but did not participate in a move-out condition inspection with the Landlord. The Landlord also did not provide testimony that she offered the Tenant at least two opportunities for the move-out condition inspection pursuant to Section 35(2) of the Act. Therefore, I find the Tenant did not extinguish his rights in relation to the security deposit. Section 38(2) of the Act does not apply.

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) 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(2) to 38(4) of the Act apply. 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.

Interest is set at 1.95% for 2023 pursuant to Section 4 of the *Residential Tenancy Regulation*. The amount of interest owing on the security deposit was calculated using the RTB Deposit Interest Calculator using today's date. Interest is calculated only on the original deposit amount before any deductions and is not doubled. Deposit and interest are calculated as follows:

Deposit & Interest	Amounts
Security deposit	\$450.00
Interest	\$0.41
Double security deposit	\$450.00
TOTAL:	\$900.41

In total, the Tenant is entitled to \$900.41, and I issue the Tenant a Monetary Order for this amount.

### Conclusion

The Tenant is issued a Monetary Order for \$900.41. 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 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 Act.

Dated: January 17, 2023

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Residential Tenancy Branch