



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSDS-DR**

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- For an order requiring the landlord to return the security deposit pursuant to section 38 of the Act

While the applicant tenant attended the hearing by way of conference call, the respondent landlord did not, although I waited until 1:40pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30pm. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

**7.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant through her advocate stated that the dispute notice and materials were served on the landlord by registered mail October 12, 2022. The package was sent to an address that was provided by the landlord on another dispute filed by the tenant against the landlord. Proof of service was provided in evidence, including a photo of the

package and a registered mail receipt. The tenant provided further evidence that the package sent to the landlord was returned to the tenant as undelivered. The tenant's advocate stated that they have never had any indication of an address change by the landlord, and the landlord provided to the tenant's advocate through email from the landlord the landlord's correct address. I find the landlord deemed served as of October 17, 2022 in accordance with sections 88, 89 and 90 of the Act.

### Issue(s) to be Decided

1. Is the tenant entitled to the return of the security deposit?

### Background and Evidence

This matter was adjourned from a direct request hearing on November 25, 2022 as the tenant had failed to provide all the necessary documentation pursuant to the direct request policy guidelines. I will hear the tenant's application as I have found that the landlord was properly served with the dispute notice and had an opportunity to appear at the hearing.

The tenancy commenced on December 15, 2020 on a month to month basis. Rent was \$500.00 per month due on the first of the month. A security deposit of \$250.00 was paid to the landlord as well and that is the subject of the tenant's claim. The tenant vacated the rental unit May 31, 2022. The landlord has not returned the security deposit to date.

The tenant testified that she provided the landlord with a notice to move out on April 25, 2022 effective May 31, 2022 and that form included the forwarding address of the tenant. The form was provided in evidence by the tenant.

The tenant testified that she did a move in condition inspection report upon taking possession of the rental unit. Some documentation was provided in evidence supporting this however it was not dated other than a statement that it was signed upon the tenant moving in.

The tenant's advocate further stated that she was present when the tenant vacated the rental unit and no condition inspection report was prepared or provided to the tenant. The tenant testified that she has not been served with an application for dispute resolution from the landlord in respect of the security deposit.

### Analysis

The undisputed evidence of the tenant is that she provided a forwarding address to the landlord on April 25, 2022 and she vacated the rental unit on May 31, 2022. Under section 38(1) of the Act, the landlord was required to either repay the security deposit to the tenant by June 15, 2022 or make an application for dispute resolution within that time frame. The Act further states that the landlord is not required to repay the security deposit if the tenant did not participate in the move in condition inspection. The undisputed evidence is that the tenant did participate in a move in condition inspection and some documentary evidence was provided by the tenant showing that the move in condition inspection was done, and the report was signed by the tenant.

Section 38(6) of the Act states that if the landlord does not comply with section 38(1) of the Act, the landlord must pay the tenant double the security deposit, which in this instance would be \$500.00.

I further find that the landlord did not comply with section 38 of the Act and either return the security deposit to the tenant or file a dispute application within the requisite time frame. Therefore I find that the tenant's application is granted and the tenant is entitled to the return of double the amount of her security deposit, totalling \$500.00.

### Conclusion

The tenant is granted a monetary order for \$500.00 in recovery of the security deposit. The monetary order must be served on the landlord. The monetary 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: February 08, 2023

---

Residential Tenancy Branch