



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCT, FFT**

### **Introduction**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended with the agent HVL ("the tenant"). The tenant was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the tenant with an opportunity to ask questions.

The tenant confirmed their email address for delivery of the Decision.

### ***Service of Documents***

As the landlord did not attend the hearing, the tenant provided evidence to establish service of the Notice of Hearing and Application for Dispute Resolution.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on June 17, 2022 to the landlord's residence as stated by the landlord in the tenancy agreement signed by the landlord, a copy of which the tenant submitted.

The tenant provided a document containing the Canada Post Tracking Number in support of service by registered mail.

Considering the tenant's credible testimony and supporting evidence, I find the tenant served the landlord as required by the Act with the above-mentioned documents 5 days after service, on June 22, 2022.

#### *Amendment*

At the hearing, the tenant requested authorization to add a request for reimbursement of the security deposit of \$11,200.00 which the tenant paid at the beginning of the tenancy. The tenant testified the landlord holds the security deposit and the tenant has not provided authority to the landlord to retain it.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for an amendment of an application at the hearing. Rule 4 states the amendment may be allowed in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

The tenant testified as follows and submitted supporting documentary evidence which is reviewed in detail later.

At the time the tenant brought the application, the landlord had unilaterally cancelled the tenancy agreement on May 31, 2022, the date before the 1-year fixed term began. A dispute immediately arose over the return of the security deposit. The police were involved. The tenant never occupied the unit. The landlord was provided a forwarding address and did not return the security deposit. The primary purpose of this application is to obtain an award for the return of double the security deposit.

Further to Rule 4, I find the landlord could reasonably have anticipated that the tenant would claim return of the tenant's security deposit. I find the correction is not prejudicial to either party. It is clear to me upon hearing the testimony and reviewing the evidence, that the main issue between the parties is the security deposit. This was reiterated by

the tenant many times in correspondence. I find the landlord knew, or should have known, that this matter would be addressed at the hearing.

I accordingly allow the tenant to amend the application.

The tenant's application is therefore amended to allow for the tenant to apply for the return of the security deposit and a doubling pursuant to the provisions of the Act.

#### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order including reimbursement of the filing fee?

Is the tenant entitled to the return of double the security deposit?

#### Background and Evidence

The tenant provided uncontradicted credible evidence as the landlord did not attend the hearing.

This is an application by a tenant for return of a security deposit and an award for liquidated damages.

The tenant submitted a comprehensive evidence package including a written summary of events, a copy of a bank draft for the security deposit, a copy of receipt from landlord for security deposit, a copy of police card and case number, and a Monetary Order Worksheet in the RTB form.

Included in the tenant's documents were many emails between the parties including a lengthy email chain. Some of these emails deal with the discussions between the parties before the agreement was signed. Others involve the sudden cancellation by the landlord of the tenancy the day before the commencement date and the tenant's demand for the return of the security deposit. The parties used the same email addresses throughout for all correspondence.

The tenant submitted a copy of the signed tenancy agreement and testified to the details of the tenancy as follows:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	Yes, dated May 5, 2023
Type of Tenancy	Fixed term
Beginning Date	June 1, 2022
Fixed Term End Date	June 1, 2023
Vacancy Date	Never occupied
Rent payable on first of month	\$5,600.00
Security deposit	\$11,200.00 (paid by bank draft on May 5, 2022, handwritten receipt provided by landlord)
Condition Inspection Report on Move-In signed by both and submitted	no
Condition Inspection Report on Move-out signed by both and submitted	no

The tenancy agreement stated the tenant must provide a security deposit of \$5,600.00, the amount of one month's rent. On May 5, 2022, the tenant gave a bank draft to the landlord in the amount of \$11,200.00, twice the monthly rent.

The tenant explained the landlord demanded \$11,200.00 **in cash** for the security deposit after signing the agreement of half that amount. The tenant submitted a copy of an email from the landlord stating:

[T]he deposit must be paid in cash [...]. The deposit is the sum of 2 months which is the security deposit plus last months rent

The tenant submitted a handwritten receipt dated May 5, 2022, containing a signature above the printed name of the landlord in the amount of \$11,200.00.

On May 31, 2022, the landlord sent an email to the tenant cancelling the tenancy agreement without explanation. They asked for an "email to which I can return the deposit via transfer". A copy of the email was submitted. As stated, the parties were routinely corresponding at the same email addresses.

The tenant reported the situation to the police. The tenant attended with the police at the landlord's residence on June 1, 2022 and submitted the investigation file number. The landlord did not return the security deposit.

The landlord sent the tenant an email on June 1, 2022, a copy of which was submitted, stating:

I could offer a lease starting on June 18, 2022 for a 6 month period and if all goes well then it can be extended. . [...] If you would like to continue with the lease cancellation, once again I would ask that you give me your name, address and working phone number and I will send you Deposit.

The tenant refused the offer and demanded return of the security deposit. On June 1, 2022, the tenant sent their forwarding address to the landlord by email, a copy of which was submitted, referenced on the first page:

I told you my name many times, even in my bank draft and previous emails. My office is very close to your house, so please drop your return payment at the front desk to the assistant. [...] You can also call me to pick up the payment at your house if you wish.

My name: [tenant name]

Address : [# , street name, city], BC Canada V1M 4E7

Phone : [number]

The sign is [name] Notary Public

The landlord replied on June 2, 2022, stating the deposit would be transferred "forthwith" to the tenant's email address. They again asked for an email or mailing address. The landlord stated, without explanation or quantification, "There will be deductions from the deposit [...]"

The tenant did not provide authorization to the landlord to retain any of the security deposit.

The tenant testified that the parties did not carry out a condition inspection on moving in and moving out.

The tenant stated that the landlord has not brought an application to keep any of the deposit.

The tenant requested a monetary award of double the deposit for the landlord's failure to return the deposit within 15 days of the provision of the forwarding address.

### Analysis

#### *Liquidated Damages*

*Policy Guideline 4. Liquidated Damages* states:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

There is no liquidated damages clause in the tenancy agreement. I find the tenant is not entitled to liquidated damages.

This aspect of the claim is dismissed without leave to reapply.

#### *Security deposit*

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value the deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the deposit for any damage to the rental unit pursuant to section 38(1)(d) of the Act.

I find the tenant provided a deposit of \$11,200.00 at the request of the landlord, twice the amount required under the agreement, and 4 times the allowable amount.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the Act.

I find the tenant provided their forwarding address to the landlord in compliance with the Act. I base my finding on my understanding of the series of events to which the tenant testified, all of which were verified by submitted documentary evidence.

I find the landlord and tenant communicated at the same email addresses throughout as evidenced by the submitted copy of the email chain. I find the landlord promised to return the security deposit by e-transfer upon receipt of the tenant's email address. I find the landlord knew the tenant's email address as evidenced by the copies of the tenant's emails submitted from April 27, 2022, to June 2, 2022, from the tenant's email address. I find the landlord promised to return the deposit to the tenant by email dated May 31 and June 21, 2020, copies of which were submitted, and did not do so. I find it most likely that the landlord's repeated demand for an email address while having it in their possession, to be a form of subterfuge the purpose of which was an attempt to avoid returning the security deposit.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act, I find that the tenant is entitled to a monetary award of double the security deposit as well as reimbursement of the filing fee, for a total Monetary Order of **\$22,500.00**.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Deposit	\$11,200.00
Doubling of security deposit - section 38(6)	\$11,200.00
Reimbursement of filing fee	\$100.00
<b>Monetary Award</b>	<b>\$22,500.00</b>

### Conclusion

I grant the tenant a Monetary Order pursuant to section 38 in the amount of **\$22,500.00**

This Monetary Order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Courts of the Province of British Columbia to be 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: February 19, 2023

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Residential Tenancy Branch