



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1099326 B.C. LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNSD, FFT**

### **Introduction**

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 11, 2023 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on July 10, 2023 as a teleconference hearing. Only the Tenant and the Tenant's Advocate C.L. appeared at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant, their advocate, and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served on the Landlord by registered mail on October 26, 2022. The Tenant provided the tracking information during the hearing, which has been reproduced on the cover page of this Decision. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on October 31, 2022, the fifth day after the registered mailing. The Landlord did not submit any documentary evidence in response to the Application.

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. 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 an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The Tenant testified that the tenancy began on May 1, 2022 and ended on August 31, 2022. During the tenancy, rent was due in the amount of \$880.00 per month. The Tenant testified that he paid a security deposit of \$440.00 to the Landlord.

The Tenant testified that he request the Landlord return his deposit and served the Landlord in person with his forwarding address in writing on September 1, 2022. The Tenant stated that he did not consent to the Landlord deducting any amount of the deposit, and that the Landlord has failed to return the Tenant's security deposit or make a claim to retain it. As such, the Tenant is seeking the return of double the amount of his deposit as well as the filing fee paid to make the Application.

### Analysis

Based on the documentary evidence before me for consideration 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 a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I accept that the Tenant vacated the rental unit on August 31, 2022 and provided the Landlord with his forwarding address in person on September 1, 2022. In

accordance with Section 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on the same date it as served in person.

As there is no evidence before me that that the Landlord was entitled to retain any portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until September 16, 2022 to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord (\$440.00 x 2 = **\$880.00**)

Having been successful, I also find the Tenant is entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$980.00**.

### Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$980.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: July 10, 2023

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Residential Tenancy Branch