



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing

### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in May 2009 and on May 8, 2009, a deposit in the sum of \$525.00 was paid. Rent was \$1,050.00 due on the first day of each month.

A move-in condition inspection report was completed and the tenant was provided a copy. A move-out inspection was completed but not signed by the tenant; nor was a copy given to the tenant. The tenant vacated on June 30, 2010.

Within 2 weeks of June 30, 2010, the tenant provided the landlord with her written forwarding address. Subsequently, the landlord returned only \$52.50 of the deposit to the tenant. The landlord mailed the tenant a copy of an invoice, submitted as evidence, which included fees for 10 drapes in the sum of \$472.50, which was deducted from the tenant's deposit. The tenant stated the unit had 6 drapes.

The tenant did not agree to have the deduction made from her deposit. She had cleaned the drapes, which were well worn when she moved in. The landlord determined the drapes had shrunk.

The landlord did not claim against the deposit, within 15 days of having received the tenant's forwarding address in writing, but returned the portion of the deposit the landlord felt the tenant was entitled to receive. After receiving the deposit, the tenant picked up the 6 old drapes, as she believed she had now paid for them.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages before me.

A move-in condition inspection report was completed and a copy given to the tenant. The move-out condition inspection completed on June 30, 2010, did not result in a signed report or any agreement to deductions from the deposit paid.

I find that the landlord had the tenant's written forwarding address no later than July 15, 2010; as the address was used to return a portion of the deposit to the tenant.

I find that the landlord had until July 30, 2010, to submit an application claiming against the deposit or to return the deposit, in full, to the tenant.

As the landlord returned only a portion of the deposit and did not ever submit a claim against the deposit paid, in the absence of a written agreement allowing deductions from the deposit, I find, pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the \$525.00 deposit paid, less \$52.50 previously refunded. No interest has accrued.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,100.00, which is comprised of \$1,050.00 double the deposit paid and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution. A deduction in the sum of \$52.50 is required as this amount was previously paid to the tenant.

Based on these determinations I grant the tenant a monetary Order for **\$1,047.50**. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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 *Residential Tenancy Act*.

Dated: February 07, 2011.

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Residential Tenancy Branch