



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, for compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required under the Act and to recover the filing fee for this proceeding.

### Issue(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

### Background and Evidence

This fixed term tenancy started on October 1, 2010 and was to expire on September 30, 2011 however it ended on March 1, 2011 when the Tenant moved out. Rent was \$1,100.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$550.00 at the beginning of the tenancy.

The Tenant said she served the Landlord on March 26, 2011 with her forwarding address in writing. The Tenant said her mother and step-father delivered this letter to the Landlord's residence and also faxed a copy of it to his workplace. The Tenant's mother gave evidence that she left the letter on a bench on the porch. The Landlord denied receiving either copy of the Tenant's letter. The Parties agree that the Tenant did not give the Landlord written authorization to keep the Tenant's security deposit and it has not been returned to her.

### Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit

then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Section 88 of the Act sets out the ways in which a document (such as the Tenant's forwarding address) may be served on another party. In particular, it provides that a document may be attached to a door of the person's residence or other conspicuous place or faxed to a number provided as an address for service. In this case, I find that the Tenant did not serve her letter in accordance with this section of the Act because she did not attach the document to a door or other conspicuous place at the Landlord's residence or fax it to an address for service of the Landlord. Instead the Tenant left a copy of the letter, unsecured, at the Landlord's residence and faxed a copy to the Landlord's business number (which is not his address for service). Given that this document was not served in a manner required under s. 88 of the Act, it cannot be deemed to have been received by the Landlord under s. 90 of the Act. Given the contradictory evidence of the Parties as to whether the Landlord received the Tenant's forwarding address and in the absence of any evidence that the Landlord did in fact receive it (eg. such as a fax confirmation report), I find that there is insufficient evidence to conclude that the Landlord received it.

The Tenant confirmed at the hearing that the address set out on her application for dispute resolution is her forwarding address for the purposes of receiving the security deposit. Consequently, I find that as of the date of this decision the Landlord has received the Tenant's forwarding address in writing for the purposes of s. 38(1) of the Act and I Order that he return the Tenant's security deposit of \$550.00 to her forthwith. I also find that the Tenant is entitled pursuant to s. 72(1) of the Act to recover from the Landlord, the \$50.00 filing fee she paid for this proceeding.

### Conclusion

A Monetary Order in the amount of **\$600.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) 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 *Residential Tenancy Act*.

Dated: July 25, 2011.

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Residential Tenancy Branch