



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD and FF

### Introduction

This application initiating this hearing was brought by the tenant on September 15, 2011 seeking a Monetary Order for return of a portion of her security deposit that was retained by the landlord without her consent and without the landlord having made application to claim on it.

### Issues to be Decided

This application requires a decision on whether the tenant is entitled to a monetary award for return of the contested portion of her security deposit and whether that amount should be doubled.

### Background and Evidence

This tenancy ran from November 1, 2006 to July 31, 2011 and the landlord holds a security deposit of \$375 paid on October 6, 2006.

During the hearing, the tenant presented a copy of the move-out condition inspection report which she had signed on July 30, 2011 authorizing the landlord to retain \$295 from the deposit for replacement of drapes. The tenant stated that a claim for \$100 for paint touch up and a \$12 claim for light bulbs were added to the form after she had signed it.

The tenant stated that the landlord had not conducted a move-in inspection report and the right to claim on the deposit had been extinguished under section 24 of the Act for that reason. However, I note that the move-in and move-out condition inspections were completed on the same document and the tenant's signature appears on both portions and both were completed.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(1)(c) requires that the deposits be returned with interest at the rate prescribed by *regulation*.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposit(s).

In the present matter, I find that the landlord did retain all of the \$375 deposit while the tenant had consented to forfeit only \$295. Therefore, I find that the tenant is entitled to return of the \$80 difference in double, plus interest on the base amount.

As the application has succeeded on its merits, I further find that the tenant is entitled to recover the filing fee for this proceeding from the landlord.

Thus, I find that the tenant is entitled to a Monetary Order calculated as follows:

Security deposit	\$375.00
Balance withheld without consent	80.00
To double balance withheld without consent t	80.00
Interest on base deposit (\$375 from October 6, 2006 to date)	11.80
Filing fee	50.00
<b>TOTAL</b>	<b>\$221.80</b>

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$221.80**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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: December 07, 2011.

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Residential Tenancy Branch