



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

The Landlords requested an adjournment in order to provide documentary evidence regarding the payment of the security deposit. The Landlords alleged the Tenant did not pay the security deposit himself but rather it was paid by the other tenant named on the tenancy agreement. I did not allow the adjournment as the Tenant was named as a tenant on the tenancy agreement and therefore, has a right under the Act to make this claim.

### Issue(s) to be Decided

Has there been a breach of section 38 of the *Residential Tenancy Act* (the "Act") by the Landlords?

### Background and Evidence

The Tenant paid a security deposit of \$750.00 to the Landlords in June of 2010.

The Tenant testified he vacated the premises on May 31, 2011. The Tenant provided the Landlords with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The testimony of the Tenant was that the Landlords did not perform either incoming or outgoing condition inspection reports.

The Landlords submit that the Tenant actually left the rental unit in March of 2011. The Landlords' position is that the Tenant left the rental unit in terrible condition, with damage and cleaning required beyond normal wear and tear. The Landlords submitted receipts and invoices to support this submission.

The Landlords acknowledge receipt of the Tenant's forwarding address on April 13, 2011.

The Landlords also allege there was an agreement with the Tenant to return any balance of the security deposit. They are uncertain if this agreement was made in writing or in oral conversation. They say they did not send the Tenant a balance of the deposit as there was none left.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of section 38 of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38 of the Act.

By failing to perform incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit for damage, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenant by the Landlords. This is one of the reasons the regulation to the Act requires the Landlords to collect interest at a specified rate on the security deposit while it is being held. However, at the present time, the specified interest rate payable is zero (0) under the regulation.

At no time did the Landlords have the ability to simply keep the security deposit because they feel they were entitled to it or were justified to keep it.

The Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the Landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit.

### Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenant the sum of **\$1,550.00**, comprised of double the security deposit (2 x \$750.00) and the \$50.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Lastly, I have included a guidebook to residential tenancies in British Columbia for the use of the Landlords. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to tenancies in this Province.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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: April 19, 2012.

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Residential Tenancy Branch