



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This is an application for a monetary order for the return of the security deposit.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant states that she personally served the Landlord with the notice of hearing package on February 28, 2013. Neither party submitted any documentary evidence. I accept the undisputed testimony of the Tenant and find that the Landlord was properly served with the notice of hearing package.

During the hearing the Tenant stated that she has already moved from the rear rental unit and would like to pick up her copy of the Decision at the Burnaby Residential Tenancy Branch Office as she does not currently have a new mailing address.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

The Tenant states that she moved from the front to the rear of a rental property owned by the same Landlord on February 3, 2013. The Tenant states that she gave the Landlord her forwarding address in writing on February 3, 2013 and requested the return of the security deposit of \$285.00 for the front unit. The Tenant stated that she paid a new security deposit for the rear unit.

The Tenant seeks a monetary order for the return of double the security deposit of \$570.00 for breaching the Act.

## Analysis

### Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I accept the undisputed testimony of the Tenant and find that she provided her forwarding address in writing to the Landlord on February 3, 2013. The Tenant moved from the front rental unit to the rear rental unit and provided her forwarding address on that date and made a request for the return of the deposit. The Landlord has not returned the \$285.00 security deposit and has not filed for dispute resolution to keep all or part of that deposit. The Tenant has established a claim pursuant to Section 38 (6) of the Act. The Tenant is granted a monetary order for \$570.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Tenant is granted a monetary order for \$570.00.

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: May 23, 2013

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Residential Tenancy Branch

