



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, MNSD, FF

### Introduction

The tenant applies to recover the remainder of a security deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the “*Act*”). On or about May 5<sup>th</sup> the landlord commenced a competing application against the tenant for recovery of cleaning costs. That matter is scheduled to be heard in September. It was not agreed to have this matter adjourned to then or that matter dealt with today. Indeed, the landlord alleges possession of documents relevant to that matter that were not before the hearing today.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to the relief claimed?

### Background and Evidence

The rental unit is a studio condominium in downtown Vancouver. The tenancy started in 2005 and ended February 28, 2014 as a result of the sale of the property. The last rent was \$1050.00. The tenant had paid a security deposit of \$445.00. A move out inspection was completed with the tenant and the landlord’s representative Mr. C. on February 28, 2014. In it the tenant provided a forwarding address. It does not provide for the retention of any of the deposit.

On or about March 12<sup>th</sup> the landlord paid the tenant \$320.00, being the remainder of the deposit less \$125.00 retained by the landlord for cleaning. The tenant disputes what he claims to have been a unilateral withholding. The landlord says the tenant indicated his agreement in a series of emails. The emails were not presented at the hearing.

### Analysis

The relevant portions of section 38 of the *Act* provide:

**Return of security deposit and pet damage deposit**

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.

(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.

(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.

In this case the landlord has not shown she had any of the listed authority to retain any portion of the deposit.

I grant the tenant a monetary award of \$890.00 for double the deposit, less the \$320.00 received, plus interest of \$15.77, plus recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is allowed. There will be a monetary order against the landlord in the amount of \$635.77.

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 08, 2014

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Residential Tenancy Branch