



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HUDSON PACIFIC PROPERTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNSD FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and by letter with his forwarding address on October 31, 2014 and again on January 31, 2015. The landlord agreed they had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act and to recover his filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed the landlord's name should be amended to its legal name so the amendment was granted. The tenant said he had paid a security deposit of \$400 in May 2012 and agreed to rent the unit for \$817 a month. The tenant vacated the unit on October 30, 2014 and provided his forwarding address in writing on October 31, 2014 and again on January 31, 2015. The landlord agreed these facts were correct. The tenant said he had agreed that the landlord could deduct \$60 from his security deposit and after some demands, the landlord had returned \$170 of his security deposit to him. The remainder of the tenant's deposit has never been returned and he gave no permission to retain it.

The landlord said he retained the deposit for the tenant had caused damage to the unit. In evidence is a letter from the tenant dated November 10, 2014 in answer to letters from the landlord concerning damages; the letter states in part, "I am disregarding your new damage fees, and if you cannot respect your move-out inspection sheet, please feel free to do whatever you want to do". The landlord said he had interpreted this to mean that he was free to keep the security deposit so it was permission to do so. The tenant contended that the meaning was that the landlord could take whatever legal steps he wanted to recover costs he claimed as damages but it was not permission to keep the deposit. In support he cites a letter he wrote dated October 31, 2014 saying he was expecting \$320 refund of his deposit after the deduction of \$80. The cheque for \$170 refund is dated November 10, 2014. The landlord said they had not filed an Application to claim against the deposit.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

The Residential Tenancy Act provides:

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 most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's

forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that he paid \$400 security deposit in May 2014, served the landlord personally by letter with his forwarding address in writing on October 31, 2014 and on January 31, 2014 and vacated on October 30, 2014. His evidence is supported by the landlord's testimony. I find he gave permission for the landlord to retain only \$80 of the deposit and the landlord refunded only \$170 of his deposit. I find the landlord cannot rely on a misinterpretation he made of a letter written by the tenant to keep a large portion of the deposit; I find the tenant's explanation more credible as it is supported by other letters he sent. The landlord stated they have not filed an Application to claim against the deposit. I find the tenant entitled to recover double the remaining \$320 of his security deposit less the amount refunded calculated according to Policy Guideline 17.

### **Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Balance of security deposit(on interest 2014-15)	320.00
Double security deposit	320.00
Filing fee	50.00
Less amount refunded	-170.00
Total Monetary Order to Tenant	520.00

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: June 11, 2015

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Residential Tenancy Branch

