



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Glenayre Realty Chilliwack Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on April 17, 2015. The tenant has provided in her direct testimony the Customer Receipt Tracking number as confirmation and has stated that she checked the Canada Post online tracking system which shows that the landlord received and signed for the package on April 23, 2015. Based on the affirmed testimony of the tenant and in accordance with sections 88, 89 and 90 of the Act, I find that the landlord has been deemed served with the tenant's notice of hearing packages and submitted documentary evidence, five days after their registered mailing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of double the security deposit and recovery of the filing fee?

### Background and Evidence

This tenancy began on February 1, 2014 on a fixed term tenancy until January 31, 2015 as shown by the submitted copy of the signed tenancy agreement dated January 29, 2014. The monthly rent was \$1,150.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$575.00 was paid.

The tenant provided written evidence that the named respondent became the landlord's agent. The undated letter from the named respondent stated,

This letter is to confirm that HLPM is the management company of this building and that all issues pertaining any units, common areas, issues or maintenance is to be addressed to M.B...

The tenant provided a copy of a written notice dated December 27, 2014 that the tenant would not be renewing the tenancy and would be vacating the rental unit on January 31, 2014. The typed letter is date stamped, December 29, 2014. The tenant clarified in her direct testimony that this was a typo error and that the end of tenancy date was in fact January 31, 2015.

The tenant stated that she verbally gave the landlord's agents, A and M her forwarding address on January 31, 2015 after the condition inspection for the move-out. The tenant also stated that she provided her forwarding address by email on February 14, 2015 to M.B. The tenant clarified in her direct testimony that the majority of her communications with this landlord were primarily by email. The tenant provided a copy of her email dated March 30, 2015 as confirmation that the landlord, M.B. accepted her forwarding address in writing as it is a response from M.B. which states,

Have you received the damage deposit yet?

The tenant responded on the same date that no deposit was received yet. The tenant provided direct testimony that as of the date of this hearing the security deposit has not been returned nor has she been made aware of the landlord filing an application for dispute to dispute the return of the security deposit.

The tenant stated that she wished to obtain a monetary order for \$1,200.00 which consists of the return of double the \$575.00 security deposit and recovery of her \$50.00 filing fee from the landlord.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the tenant's undisputed affirmed testimony that the tenancy ended on January 31, 2015. At that time, she informed the landlord's agents verbally of her forwarding address for the return of her \$575.00 security deposit.

Although the tenant provided her forwarding address by email to the landlord, I find that email was the primary form of communication between these two parties based upon the tenant's direct testimony and the submitted copies of the email exchange between these two parties. This is further confirmed by the landlord's email asking the tenant if she had received the returned security deposit. As such, I accept that the landlord received the tenant's forwarding address in writing by email on February 14, 2015. The tenant filed for dispute resolution on April 16, 2015 and as of the date of this hearing, the landlord has failed to return the security deposit.

The tenant has established a claim for the return of double the \$575.00 security deposit and is entitled to a monetary claim of \$1,150.00. The tenant is also entitled to recovery of the \$50.00 filing fee from the landlord having been successful in her application.

### Conclusion

I issue a monetary order in the tenant's' favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlord's' failure to comply with the provisions of section 38 of the Act:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$575.00
Monetary Award for Landlord's' Failure to Comply with s. 38 of the Act	575.00
Recovery of Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1200.00</b>

The tenant is provided with these orders in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to

comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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: September 23, 2015

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Residential Tenancy Branch

