



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 27, 2020, wherein the Tenant sought return of his security deposit and recovery of the filing fee.

The Tenant's Application was originally scheduled for 1:30 p.m. on June 18, 2020 and adjourned to August 13, 2020. Only the Tenant called into the June 18, 2020 hearing. When the hearing reconvened on August 13, 2020 the Tenant called in as did the Landlord's Agent, X.W.; both gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the parties' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to return of his security deposit?
2. Should the Tenant recover the filing fee?

### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began December 1, 2018. The Tenant paid \$1,000.00 a month in rent as well as a \$1,000.00 security deposit.

The Tenant testified that he moved from the rental property on January 1, 2020.

On January 13, 2020 the Tenant sent an email to the Landlord's agent, X.W., enclosing a letter dated January 12, 2020, to the Landlord's agent with his forwarding address. The Tenant confirmed that, although they regularly communicated by email during the tenancy, the Landlord's agent did not respond and did not confirm receipt of his forwarding address.

The Tenant confirmed that as of the date of the August 12, 2020 hearing he had not received his security deposit.

The Tenant also confirmed that he has not been served with an Application for Dispute Resolution.

The Tenant stated that the Landlord did not perform a move in condition inspection report, nor did they perform a move out condition inspection.

The Tenant confirmed that he did not agree to the Landlord retaining his security deposit.

In response to the Tenant's claim the Landlord's agent, X.W., testified as follows. He confirmed that he is the Landlord's friend and he looks after the rental for the Landlord as she is not a resident in Canada.

X.W. confirmed that when the Tenant moved into the rental unit, he did not perform a move in condition inspection. X.W. stated that the Tenant moved in with a pre-existing tenant. He further stated that the room was clean and there were no issues.

X.W. confirmed the Tenant paid a \$1,000.00 security deposit.

X.W. confirmed that the Tenant moved out of the rental unit in early January 2020. He further confirmed he received the Tenant's forwarding address by email in mid January 2020.

X.W. testified that he did not perform a move out condition inspection as he was not in Canada at the time. X.W. stated that the other Tenant said that everything was okay.

X.W. stated that they did not return the \$1,000.00 security deposit to the Tenant. He stated that the original tenancy contract was supposed to end on November 2019 but both Tenants asked to stay until April 2020. He stated that when he tried to sign a new contract with them, neither of them were available, but they verbally agreed to stay until April 2020.

X.W. said that the Tenant moved out before April 2020, and did not give one month's notice to end his tenancy, and as such X.W. decided not to return his deposit. X.W. stated that the rental unit remains vacant as he was not in Canada until March.

### Analysis

The Tenant applies for return of his security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

#### **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.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that he did not agree to the Landlord retaining any portion of his security deposit.

As X.W. confirmed receipt of the Tenant's forwarding address by email, I find that the Landlord received the Tenant's forwarding address in writing on January 13, 2020.

I find that the Landlord failed to return the Tenant's security deposit and failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant (due to lack of notice to end the tenancy, or breach of a fixed term as X.W. stated during the hearing), they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$2,100.00**, comprised of double the security deposit (2 x \$1,000.00) and the \$100.00 fee for filing this Application.

### Conclusion

The Tenant's application for return of the security deposit is granted. As the Landlord failed to comply with section 38 of the *Act* the Tenant is entitled to recover double the security deposit paid. Having been successful in this Application, the Tenant is also entitled to recover the filing fee paid to the Residential Tenancy Branch. In furtherance of this the Tenant is granted a formal Monetary Order in the amount of **\$2,100.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order 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: August 13, 2020