



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBUS CHARITY ASSOCIATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant January 02, 2022 (the “Application”). The Tenant applied for return of their security deposit and reimbursement for the filing fee.

T.T. and J.T. appeared at the hearing for the Tenant. P.B. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

T.T. and J.T. confirmed at the hearing that the Tenant is seeking return of double their security deposit.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started January 01, 2021. The Tenant paid a \$947.50 security deposit.

The parties agreed the Tenant moved out of the rental unit October 31, 2021.

The parties agreed the Tenant's written forwarding address was sent to the Landlord, and received by the Landlord, November 30, 2021.

The parties agreed on the following. The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to the RTB to keep the security deposit.

The parties agreed the Landlord and Tenant did a move-in inspection together.

P.B. testified that the Landlord did a move-out inspection on their own and the Tenant was asked to participate; however, was not served with the RTB Notice of Final Opportunity to Schedule a Condition Inspection.

T.T. and J.T. testified that the parties did not do a move-out inspection together and the Landlord did not contact the Tenant about doing an inspection at all.

I do not find it necessary to outline the documentary evidence submitted because the parties agreed on all relevant points.

### Analysis

Section 38 of the *Residential Tenancy Act* (the "*Act*") sets out the obligations of a landlord in relation to security deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to (4) of the *Act*.

Given the testimony of the parties, I accept the tenancy ended October 31, 2021.

Given the testimony of the parties, I accept the Landlord received the Tenant's forwarding address in writing November 30, 2021.

November 30, 2021 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from November 30, 2021, to repay the security deposit in full or file a claim with the RTB against it. The Landlord had not done either by August 30, 2022, the hearing date. I find the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to (4) of the *Act* state:

(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...

Given the testimony of the parties, I find none of the exceptions to section 38(1) of the *Act*, as set out in sections 38(2) to (4) of the *Act*, apply.

In the circumstances, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to (4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*. The Landlord must return \$1,895.00 to the Tenant. No interest is owed on the security deposit because the amount of interest owed has been 0% since 2009.

Given the Tenant has been successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$1,995.00 and is issued a Monetary Order in this amount.

### Conclusion

The Tenant is issued a Monetary Order for \$1,995.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in the Small Claims division of the BC Provincial Court 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 *Act*.

Dated: September 02, 2022

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Residential Tenancy Branch