



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNSDS-DR, FFT**

### **Introduction**

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

- For an order requiring the landlord to return the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord did not appear. Tenant AA appeared. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The tenant was reminded to not record the hearing pursuant to Rule of Procedure 6.11. The tenant was affirmed.

The tenant testified that he served the landlord with the dispute notice and evidence package by registered mail on March 20, 2023. He provided a Canada Post receipt in evidence as proof of service. I find based on the tenant’s evidence that the landlord was served on March 25, 2023, pursuant to sections 88, 89, and 90 of the Act.

### **Preliminary Issue – Jurisdiction**

The matter was adjourned from a direct request hearing to a participatory hearing as it was unclear whether the landlord and tenant were sharing kitchen and bathroom facilities in the same residence. The tenant advised that while the landlord lived in the rental unit, he had a separate kitchen and bathroom. I therefore have jurisdiction.

### Background and Evidence

The tenancy commenced on February 1, 2022, for a 6 month fixed term. Rent was \$850.00 per month due on the first of the month. The landlord still holds a security deposit of \$425.00 in trust for the tenant. The tenancy ended August 30, 2022.

The tenant testified that the landlord and tenant did not do a move in condition inspection. The landlord and tenant did a move out inspection but the tenant did not receive a report.

The tenant provided his forwarding address on RTB Form 47 to the landlord on November 17, 2022 by registered mail. The tenant provided a Canada Post registered mail receipt in evidence as proof of service. The tenant has not received his security deposit back. The tenant did not agree in writing to the landlord retaining all or part of the security deposit. The tenant has no knowledge about whether the landlord filed an application for dispute resolution to retain the security deposit.

### Analysis

The undisputed evidence of the tenant is:

- The landlord and tenant did not complete a move in condition inspection of the rental unit;
- The landlord and tenant did a walk through of the rental unit when the tenancy ended however no move out condition inspection report was provided to the tenant;
- The tenant did not agree in writing to allow the landlord to retain all or part of the security deposit;
- The tenant provided his forwarding address to the landlord on November 17, 2022.

Section 38(1) of the Act requires the landlord to either return the security deposit or file an application for dispute resolution within 15 days of receiving the tenant's forwarding address. I find that the landlord did neither of those things. Section 38(6) of the Act states that if the landlord does not comply with section 38(1) of the Act, the landlord must return double the amount of the security deposit to the tenant.

I find that the landlord has failed to comply with section 38 of the Act and the tenant's application is granted. The tenant is entitled to compensation of \$850.00 which is double the amount of the security deposit.

As the tenant was successful in his application, he is entitled to recover the \$100.00 filing fee for the application.

### Conclusion

The tenant is granted a monetary order of \$950.00 for the security deposit and filing fee. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 27, 2023

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Residential Tenancy Branch