



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNSD, FFT**

### **Introduction**

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

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package (the "NoDRP") which was issued to the Tenant on August 19, 2022. The Tenant testified that she served the NoDRP and evidence to the Landlord by registered mail and by email. The Landlord confirmed receipt. I find the NoDRP and evidence was deemed served on the Landlord on August 24, 2022; and,
- the Landlord's evidence package was served by email on April 17, 2023, the Tenant confirmed receipt, deemed served on April 20, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation* (the “Regulation”), I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
2. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 6, 2021. The fixed term ended on June 26, 2022, and the tenancy ended on this date. Monthly rent was \$1,450.00 payable on the first day of each month. A security deposit of \$750.00 was collected at the start of the tenancy. The Landlord retained \$614.91 of the security deposit.

The Tenant sent her forwarding address to the Landlord by text message on June 27, 2022. The Landlord confirmed receipt of the Tenant’s forwarding address.

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 Landlord still holds the security deposit. However, the Landlord returned \$80.09 on July 12, 2022, and she returned \$55.00 on July 16, 2022.

The Tenant and Landlord did a move-in walk through of the rental unit at the beginning of the tenancy. Neither party uploaded a copy of the move-in condition inspection report.

The Tenant did not do the move-out condition inspection with the Landlord. The Landlord did not provide evidence that she offered the Tenant two opportunities to do the move-out condition inspection. The Landlord did not upload a copy of the move-out condition inspection report.

### Analysis

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit 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 38(4) of the Act.

I accept the testimony of the parties and based on this, as well as the documentary evidence submitted, I find the following:

- The tenancy ended June 26, 2022.
- The Tenant's forwarding address was provided to the Landlord in writing on June 27, 2022, and the Landlord confirms receipt of the Tenant's forwarding address. I find the forwarding address was deemed served on the Landlord on June 30, 2022.

June 30, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from June 30, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of June 30, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

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

38 ...

- (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...*

The Tenant participated in a move-in condition inspection walk through; however, neither party uploaded a copy of this report for this claim. I find the Tenant did not receive a copy of the move-in condition inspection report after the move-in walk through.

The Tenant did not participate in the move-out condition inspection with the Landlord at the end of the tenancy. The Landlord did not provide evidence that she offered the Tenant with two opportunities to do the move-out condition inspection pursuant to Section 17 of the Regulation. I find the Landlord did not provide the Tenant with two opportunities to do the move-out condition inspection. I find that the Tenant did not extinguish her rights in relation to the security deposit. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the Act does not apply.

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. Section 38(4) of the Act does not apply.

Given the above, 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 38(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 **\$1,369.60** ( $\$750.00 \times 2 + \$4.69 - (\$80.09 + \$55.00)$ ) to the Tenant. Based on interest owing on the outstanding amount of the security deposit, the Landlord owes \$4.69. This amount was calculated using the RTB Deposit Interest Calculator.

As the Tenant was successful in the Application, I award the Tenant reimbursement for the **\$100.00** filing fee pursuant to Section 72(1) of the Act.

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to her for any remaining outstanding claims. An Information Officer can be reached at:

5021 Kingsway  
Burnaby, BC  
Phone: 604-660-1020 (Lower Mainland)  
250-387-1602 (Victoria)  
1-800-665-8779

Website: [www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies](http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies)

In total, the Tenant is entitled to \$1,469.60 and I issue the Tenant a Monetary Order for this amount.

### Conclusion

The Tenant is issued a Monetary Order for \$1,469.60. 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 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: April 27, 2023

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Residential Tenancy Branch