



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

The Tenant applied for dispute resolution (Application) and seeks an order for the Landlord to return the security deposit under section 38 of the *Residential Tenancy Act* (the Act). The Tenant seeks to recover \$1,050.00 from the Landlord which is double the amount of the security deposit. The Tenant also seeks to recover the cost of the filing fee from the Landlord under section 72 of the Act.

The Tenant and the Landlord's Agent attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

### Preliminary Issue: Adjournment

The Landlord's Agent requested the hearing be adjourned as their daughter, the Respondent Landlord, was presently out of the province. The Tenant objected to the request for adjournment, and they argued the Landlord had adequate notice of the hearing and time to prepare accordingly.

I found the Landlord was provided with around four months' notice of the hearing, which I deemed to be sufficient to allow the Landlord to accommodate the hearing. The Landlord's Agent did not provide a reason as to why the Landlord could not attend the

hearing from outside of the province, which was conducted via teleconference. Additionally, the Landlord's Agent stated they resided with the Landlord and knew the details of what happened in relation to the tenancy. Therefore, I find the Landlord has sufficient representation at the hearing. For these reasons the request for adjournment was denied.

I reached this decision by considering the factors set out in rule 7.9 of the *Rules of Procedure*, particularly the possible prejudice to each party, whether the adjournment is required to provide a fair opportunity for a party to be heard, and the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment.

#### Issues to be Decided

1. Is the Tenant entitled to an order for the return of the security deposit that the Landlord is holding?
2. Is the Tenant entitled to recover the costs of the filing fee from the Landlord?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy. The tenancy began around August 2010 with the Tenant and one Co-Tenant as Tenants. The Co-Tenant vacated the rental unit in May 2021 and a new written tenancy agreement was given to the Tenant to sign. The Tenant signed the new tenancy agreement, though a copy was not provided to the Tenant by the Landlord. The Landlord requested a security deposit of \$525.00 which was paid by the Tenant on May 31, 2021 by e-transfer. The Landlord still holds the security deposit. The tenancy ended on July 28, 2021.

The Tenant testified as follows. They had cleaned the rental unit ahead of an end of tenancy inspection which took place on July 28, 2021. The Tenant also provided the Landlord with their forwarding address and the key to the rental unit in-person on July 28, 2021 during the inspection.

The security deposit was not returned to the Tenant. The Landlord made an Application for Dispute Resolution with the Residential Tenancy Branch within 15 days of getting the Tenant's forwarding address. However, the Landlord withdrew their application at the hearing and was warned by the Arbitrator that no extensions to any deadlines had been provided.

The Tenant gave the Landlord over a year to either return the security deposit or make a new application for dispute resolution and neither of which has happened so they seek the return of double their security deposit and the filing fee.

The end of tenancy inspection took around 5 minutes to complete, and no condition report was provided to the Tenant. No inspection took place at the start of the tenancy so no start of tenancy condition report was prepared.

The Tenant provided a copy of the Tenant's Notice of Forwarding Address (RTB-47 form) and a copy of a witnessed Proof of Service (RTB-41 form) into evidence.

The Landlord's Agent testified as follows. There was mould in areas of the rental unit and they had to put coffee grounds down to get rid of the smell lodged in the carpets. Some of the Tenant's child's items were also left behind in the rental unit.

There was an inspection of the rental unit on July 28, 2021. A note had to be placed on the door of the rental unit as the Tenant had blocked the Landlord on social media so there were no other way to inform the Tenant of the inspection.

The Landlord took photographs of the rental unit during the end of tenancy inspection, though no written inspection report was prepared. The Landlord informed the Tenant they were not satisfied with the state they left the rental unit.

The Tenant provided their father's address to the Landlord as a forwarding address. When the Landlord's Agent forwarded mail to this address it was returned to them. The Landlord's Agent was unable to confirm if the Landlord received the Tenant's forwarding address in writing and did not have a copy of the RTB-47 form available to them during the hearing.

In response to the testimony of the Landlord's Agent, the Tenant confirmed the forwarding address they provided to the Landlord was indeed their father's address and it was correct at the time. Their father has since sold their house. The Tenant pointed

out that the Landlord served the documents for their own application for dispute resolution to their father's address, which indicates they did have a forwarding address for the Tenant.

The Tenant disputed the description of the condition the rental unit put forward by the Landlord's Agent.

### Analysis

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days of the tenancy ending and receiving the Tenant's forwarding address in writing, whichever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Section 36 of the Act also states that a tenant may also extinguish their right to the return of a security deposit if they fail to attend an inspection of the rental unit at either the start or end of the tenancy after being given 2 opportunities to do so, unless the tenant has abandoned the rental unit.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the testimony of both parties, I find that the tenancy ended on July 28, 2021. The Tenant testified they served their forwarding address in writing in-person on July 28, 2021. I found the Landlord's Agent's testimony regarding the receipt of the Tenant's forwarding address to be inconsistent and vague. They acknowledged receiving the Tenant's father's address but denied the Landlord received a forwarding address for the Tenant in writing. Given that the Tenant has provided a witnessed proof of service document, and that the Landlord was able to serve the Tenant at the forwarding address provided soon after the tenancy ended, I find on a balance of probabilities that the Landlord was served with the Tenant's forwarding address in-person on July 28, 2021.

This means the Landlord would have had to either return the security deposit to the Tenant or make an application for dispute resolution claiming against the security deposit by August 12, 2021

I find the Landlord has not returned the security deposit to the Tenant based on the testimony of both parties. The Landlord filed an application with the Residential Tenancy Branch claiming against the security deposit on August 10, 2021, within the 15 day period set out in section 38(1) of the Act. However, I find the Landlord withdrew their application at the hearing. The file number for the Landlord's application is included on the front page of this Decision.

I find that making, and then withdrawing an application claiming against a security deposit does not fulfil the requirements set out for a landlord in section 38(1) of the Act as a decision regarding the security deposit was not provided by the arbitrator. I find that if a landlord were allowed to make an application, then withdraw it, and be permitted to retain the security deposit, this would amount to a circumvention of the Act, which is of no effect in accordance with section 5(2) of the Act.

I find the Landlord has failed to return the security deposit to the tenant or make an application for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find no evidence that indicates to me the Landlord was entitled to retain the security deposit under either section 38(3) or 38(4) of the Act as the Landlord did not have an outstanding Monetary Order against the Tenant, or have written permission from the Tenant to retain the security deposit. Additionally, I find there is no evidence that the Tenant had extinguished their right to the return of the security deposit per section 38(2) of the Act as I find the Tenant attended the only inspection of the rental unit that took place.

Given the above, I find the Landlord has failed to comply with section 38(1) of the Act and grant the Tenant's Application. Therefore, the Landlord is not permitted to claim against the security deposit and I order the Landlord to return double the security deposit to the Tenant per section 38(6) of the Act.

Per section 4 of the *Residential Tenancy Regulation*, interest on security deposits is calculated at 4.5% below the prime lending rate which is currently 6.95%. The amount of interest owing on the security deposit was calculated using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

As the Tenant's Application was successful, I find they are entitled to recover the cost of the filing fee of \$100.00 from the Landlord.

Conclusion

The Application is granted.

The Tenant is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenant's obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below:

Item	Amount
Security deposit	\$525.00
Interest	\$4.80
Double security deposit	\$525.00
Filing fee	\$100.00
<b>Total</b>	<b>\$1,154.80</b>

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: June 20, 2023

---

Residential Tenancy Branch