



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

<b><u>Dispute Codes</u></b>	For the landlord:	MND, FF
	For the tenant:	MNSD

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for compensation for alleged damage to the rental unit by the tenant and recovery of the filing fee.

The tenant applied for a return of their security deposit, doubled.

The landlord's agent, the tenant, and the tenant's legal counsel (counsel) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties were affirmed.

Thereafter, preliminary matters were discussed prior to a hearing on the merits of the applications.

The tenant denied receiving the landlord's application for dispute resolution, evidence, and notice of hearing (NODRP). The agent said the documents were delivered, initially by putting the NODRP in the mailbox on the property, which was then retrieved by someone opening the door of the rental unit. As will be addressed, I informed the landlord that this was insufficient service of the landlord's application.

No issue was made with regard to the service of the tenant's NODRP, which was sent by registered mail to each landlord.

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

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

Landlord's application –

Section 59(3) of the Act states a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 89(1) of the Act does not allow for service of the application by dropping off the application in the mailbox. Further serving someone in the rental unit is also insufficient service.

I find the landlord submitted insufficient evidence that they served the tenant their application for dispute resolution and notice of this hearing in a manner required by the Act.

As a result of the insufficient evidence to prove service of the landlord's application as required by the Act, I **dismiss** the landlord's application, **with leave to reapply**.

**Leave to reapply does not extend any applicable time limitation deadlines.**

As I have not considered the merits of the landlord's application, I **dismiss** the request to recover the cost of the filing fee, without leave to reapply.

#### Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit and that it be doubled?

### Background and Evidence

On the tenant's application, they submitted the tenancy began on October 28, 2012, and ended on September 29, 2021.

The parties were in a previous dispute resolution proceeding hearing on November 10, 2022 to consider the tenant's claim for compensation relating to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and a return of their security deposit.

The Decision of December 6, 2022 was filed in evidence by the tenant. In the Decision, another arbitrator determined that the tenant paid a security deposit of \$675, but found that the tenant's application was made prior to the tenant providing a written forwarding address. The other arbitrator dismissed the tenant's application for a return of their security deposit, with leave to reapply.

The other arbitrator further said that the landlord had 15 days from the receipt of that Decision of December 6, 2022 to comply with section 38(1) of the Act and if the landlord fails to do so, the tenant could re-apply for a return of their security deposit.

The tenant claims the landlord did not comply with the December 6, 2022, Decision or section 38(1) of the Act.

In response, the landlord's agent said they sought guidance from staff with the RTB after the hearing on December 6, 2022, and was informed that they did not need to file another application, as they already had an application filed, which was the present application filed on November 3, 2022, a week before the hearing on the tenant's application.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay any security deposit to the tenant or make an application for dispute resolution claiming against the security deposit.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, another arbitrator in their Decision of December 6, 2022, ordered the landlord to comply with section 38 (1) within 15 days of that Decision.

The landlord's agent confirmed they did not make an application within 15 days, as they were informed that it was not necessary.

In this case, I am not privy to communication between landlords and tenants and RTB staff, what information was given to staff and what staff said in return, and even if I was, I am required to enforce the Act and findings in previous Decisions where the issue has been dealt with. Apart from that, however, the landlord was instructed to follow section 38(1) of the Act within 15 days of the Decision, which meant that the landlord was required to make an application **claiming against the tenant's security deposit** and they did not.

The landlord's application here was not a claim against the tenant's security deposit as that issue was not marked, but rather only a claim for monetary compensation for alleged damage by the tenant.

Due to the landlord's failure to comply with the Decision of December 6, 2022, and section 38(1) of the Act, I **order** the landlord to return the tenant's security deposit of \$675 and that this amount must be doubled.

I find the tenant has established a monetary claim of \$1350, comprised of their security deposit of \$675, doubled to \$1350. The tenant is issued a monetary order in that amount.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlords' application is dismissed, with leave to reapply.

The tenant's application is granted as they are awarded a monetary order in the amount of \$1350 as noted above.

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 15, 2023

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Residential Tenancy Branch