



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for double the security deposit as the deposit had received by the tenant beyond 15 days.

Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return an additional amount representing double the security deposit. The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to double the security deposit pursuant to section 38 of the Act.

### **Background and Evidence**

The tenancy began on June 15, 2009 and ended on January 31, 2012. Rent was \$910.00 per month. The tenant testified that the forwarding address, which was his work address, was given to the landlord in writing at the end of the tenancy.

The tenant testified that the security deposit funds were not returned despite several calls to the landlord.

The tenant testified that in speaking with a staff member, he was told that the refund cheque was being held up awaiting the signature of a company official who was on vacation. The tenant acknowledged that, although the address he provided on the Move-Out Inspection Report, did not contain the name of his employer's business, he later clarified this data, providing the name to be included in the mailing address.

The tenant stated that he did not receive the return of his deposit until mail from the landlord arrived addressed to the tenant that was postmarked March 13, 2012. The tenant testified that this envelope contained a cheque from the landlord back-dated to February 13, 2012. The tenant's position is that the security deposit was not returned to him within 15 days as required under the Act and the tenant is therefore entitled to receive double the deposit.

The landlord disputed the tenant's version of the events and testified that, in due course after the tenancy ended, the landlord prepared a refund cheque for the remaining deposit as verified by the printout submitted by the tenant showing that the account was confirmed on February 1, 2012. The landlord testified that this cheque was processed on February 13, 2012 and was mailed to the exact address provided by the tenant. According to the landlord, the mail with the cheque dated February 13, 2012 was sent that day and as such was mailed out to the tenant prior to the 15-day deadline under the Act.

The landlord testified that the mail that was sent on February 13, 2012 containing the cheque of the same date was later returned to the landlord by Canada Post because the address was not complete. The landlord stated that he could not provide evidence showing the post-mark to prove that the cheque was initially sent on February 13, 2012 nor a copy of the returned envelope that was rejected by Canada Post, because the company did not normally retain such paperwork.

However, the landlord provided two witnesses, one of whom testified that she sent the cheque out to the tenant on February 13, 2012. She further testified that, in March she was told that this mail had been returned and that the same cheque must be re-sent to the tenant after first revising the address to include the business name in addition to the tenant's name and the original address. The witness testified that she placed a note featuring the more complete address, that contained the name of the tenant's employer's company, over the old address so that it would show in the envelope window and the cheque was then re-mailed to the tenant.

The landlord's second witness testified that she had received a phone call from the tenant sometime in March inquiring as to why his security deposit had not been refunded to him and the tenant was informed that the envelope containing the cheque was returned to the landlord by Canada Post due to an incomplete mailing address. The witness testified that the tenant then verbally provided the name of his employer's business and this data was given to another staff member who was instructed to re-address the mail and re-send the cheque to the tenant.

The landlord pointed out that, after the cheque was initially mailed out and once it was returned by Canada Post, the address would be checked by their staff, against the original address data provided by the tenant on the Move-Out Inspection Report for accuracy. If found to be identical, the landlord would take no further action, being that it had already fulfilled its obligation under the Act to return the funds to the written forwarding address that was supplied by the tenant himself. The landlord testified that the only way the second mailing would be triggered was by the tenant's phone call during which he finally provided a complete address. The landlord testified that the

cheque was not re-issued with a March date, because the process of cancelling and reissuing a cheque cost money and would cause further delays, so the cheque envelope was merely re-addressed and the same cheque was sent out in March as soon as the corrected data was received from the tenant, who had called in looking for his refund.

The landlord's position was that they should not be held accountable for the late return of the deposit when the delay was caused solely by the tenant.

The tenant argued that, although the address he provided did not contain the name of his employer's business, any mail sent to him at that address, including the one allegedly mailed by the landlord on February 13, 2012, would have been received by him with no problem as he had consistently received a significant amount of mail similarly addressed in the past. The tenant testified that he knows of no mail that was ever returned by Canada Post.

The tenant also pointed out that the fact that the cheque was dated February 13, 2012 was not proof that it was ever actually mailed on that precise date. The tenant stated that, even if it was mailed sometime in February, the landlord has failed to prove the exact date it was sent out. The tenant pointed out that the landlord's witnesses did not provide the dates that any of the alleged transactions occurred, nor did the landlord provide any evidentiary documentation or records to verify the date of the alleged "original" mailing. The tenant also pointed out that the landlord failed to submit a copy of the rejected envelope/address allegedly returned by Canada Post to support his testimony.

### **Analysis**

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In this instance, I find that there is irrefutable evidence proving the following:

- The landlord issued a cheque to the tenant dated February 13, 2012.

- The tenant provided a forwarding address in writing on January 31, 2012, but did not include his employer's company name on the forwarding address he provided to the landlord.
- The tenant received an envelope postmarked March 13, 2012 containing a cheque for \$345.00 dated February 13, 2012
- The tenant consented to a deduction from the security deposit in the amount of \$75.00 for carpet cleaning

Although there are strong implications to support the landlord's testimony, I find that the following key data was not proven by the landlord:

- the date that the February 13, 2012 cheque was actually originally mailed to the tenant .
- verification of any kind that the first mailing was rejected by Canada Post and was returned to the landlord.

Given the above, I find that I must look to who carries the burden of proof in this matter. I find that, once the tenant had established and proven that the security deposit refund was received by him in March, the landlord then had the burden of proof, as always, to verify that the funds were mailed on or before the fifteenth day after receipt of the tenant's written forwarding address.

I accept the landlord's verbal testimony that it is likely that a cheque dated February 13, 2012 was logically mailed the same day. But this testimony was disputed by the tenant and the landlord did not supply sufficient evidentiary proof of the actual *mailing* date. It is the date of mailing that must be verified by records when challenged, and the landlord was relaying on the date of the cheque, which I find may or may not be indicative of the date it was sent out, regardless of the landlord's testimony about standard procedures within the property management company.

With respect to the landlord's allegation that the tenant did not provide a valid forwarding address which resulted in the cheque allegedly sent on February 13, 2012 being returned to the landlord , again I can accept that this is a realistic possibility, particularly as the tenant clearly did not supply the company name in his forwarding address.

However, the landlord's and his witness's verbal testimony supporting this fact must withstand the tenant's challenge. I find that to adequately meet the burden of proof, the landlord should have provided any documentary records as evidence to verify that this happened as alleged. I find that Canada Post would have issued some kind of

notification to the landlord along with the returned mail. The tenant denied that this could have transpired in the way described by the landlord. The tenant obviously would not be apprised by Canada Post if it did and the tenant would have no means to confirm nor dispel the occurrence. Only the landlord would have that data and nothing was submitted respecting this issue.

Given the evidence, I find that the landlord has not succeeded in adequately meeting the burden of proof that the deposit funds were mailed to the tenant within 15 days. Pursuant to the applicable provisions in the Act, I find that the tenant is entitled to receive double the remaining security deposit in the amount of \$690.00 minus the \$345.00 already paid. The tenant's total entitlement is \$395.00 comprised of \$345.00 for double the remaining deposit and the \$50.00.

The tenant's claim for reimbursement for mailing costs is not compensable under the Act and this portion of the tenant's claim must be dismissed.

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$395.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: April 03, 2012.

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Residential Tenancy Branch