



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for the return of double their security deposit and key deposit.

Tenant MT and counsel for the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the evidence of the tenants was presented. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. Tenant MT provided affirmed testimony that the Notice and evidence was served on the landlord by registered mail on January 21, 2013 to the service address provided by the landlord on the tenancy agreement. The tenants provided a registered mail receipt with tracking number as evidence and confirmed during the hearing that according to the online postal tracking website, the landlord did not pick up the registered mail package. The documentary evidence supports that the address on the registered mail receipt and the service address of the landlord provided on the tenancy agreement matched. I find the landlord was duly served on the fifth day after mailing, in accordance with section 90 of the *Act*.

### Issue to be Decided

- Are the tenants entitled to the return of double their security deposit and key deposit under the *Act*?

### Background and Evidence

A fixed term tenancy began on February 1, 2011 that was to revert to a month to month tenancy after January 31, 2012. Monthly rent in the amount of \$1,800.00 was due on the first day of each month. A security deposit of \$1,000.00 and a key deposit of \$200.00 for a third rental unit key were paid by the tenants at the start of the tenancy.

The tenancy ended on January 31, 2012 when the tenants vacated the rental unit. According to tenant MT, the tenants provided Notice to the landlord that they would be ending the tenancy at the end of the one year term effective January 31, 2012.

Tenant MT testified that he provided his forwarding address to the landlord via text message on February 1, 2012 and February 12, 2012. Tenant MT referred to the tenants' documentary evidence which contained several pages of photocopied screen images of text messages between the tenants and the landlord. According to tenant MT, the date of the text messages from tenant MT were sent on both February 1, 2012 and February 12, 2012 and include the forwarding address sent to name of the landlord. Tenant MT testified that the name in his contact list matched the name of the landlord and the landlord's phone number provided by the landlord on the tenancy agreement as a contact number for the landlord. Counsel also confirmed during the hearing that the name of the landlord matched the phone number listed for the landlord in tenants MT's phone contact list, the same phone used for text messages sent to and received from the landlord.

In another text message submitted in evidence, tenant HD, provided his forwarding address to the landlord in a text message dated March 19, 2012. According to the documentary evidence submitted, in one text message where tenant MT requests the return of \$1,200.00 comprised of the \$1,000.00 security deposit and \$200.00 for the third key deposit, the landlord responds by text message with the following text:

"...You know I was going to make the right deductions so ur right wouldn't be affected now I see this text why don't you go to hell I show you I can keep the whole thing cauz you breached the contract..."

[reproduced as written]

Tenant MT testified that they have not received any portion of their security deposit of \$1,000.00 from the landlord or their key deposit of \$200.00 for the third key to the rental unit. Documentary evidence supports that the keys were left at the rental unit. The landlord did not file an application to claim towards the tenants' security deposit. The

landlord did not dispute that a security deposit of \$1,000.00 and a key deposit of \$200.00 was paid by the tenants in the text messages submitted in evidence by the tenants. The landlord also did not dispute the third rental unit key being returned in the text messages.

The tenants are seeking the return of double their security deposit and key deposit for a total of \$2,400.00.

### Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Tenants' claim for the return of double the key deposit** –The tenants provided documentary evidence, text messages between the tenants and the landlord, requesting the return of their security deposit and key deposit. The tenants also provided evidence that they provided their forwarding address to the landlord via text message and that the landlord responded to those text messages for the purposes of the return of the tenants' security deposit and key deposit.

There is no provision in the *Act*, however, for a key deposit to be doubled as there is with a security deposit in this circumstance. In the matter before me, **I find** the key deposit is not part of the security deposit, and was a separate amount paid by the tenants for a third key to the rental unit. **I accept** the undisputed testimony that the tenants did not receive their \$200.00 key deposit back from the landlord after the tenancy ended and documentary evidence supports that the key was left at the rental unit. Therefore, **I grant** the tenants \$200.00 as compensation for their unreturned key deposit. **I dismiss** the tenants request to double the key deposit as the *Act* does not provide for the doubling of a key deposit in this circumstance.

**Tenants' claim for the return of double the security deposit** – I accept that the tenants vacated the rental unit on January 31, 2012 and that the tenants provided their forwarding addresses by text message which the landlord responded to via text message. I accept the undisputed testimony that the landlord has not returned any portion of the tenants' \$1000.00 security deposit. Furthermore, **I find** the landlord breached section 19 of the *Act* by requesting a security deposit of \$1,000.00 as the maximum security deposit under the *Act* is one-half of a month's rent. In this matter, the maximum security deposit should have been \$900.00.

Section 38 of the *Act* applies which states:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[emphasis added]

In the matter before me, **I find** that the landlord failed to repay the \$1,000.00 security deposit or make an application for dispute resolution claiming against the security deposit. Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants provided on February 1, 2012, again on February 12, 2012 and on March 19, 2012 via text message, having not made a claim towards the security deposit. Therefore, **I find** the tenants are entitled to the return of double the original security deposit of \$1,000.00 for a total of **\$2,000.00**. I note that the security deposit has accrued no interest since the start of the tenancy.

**I caution** the landlord that the *Act* **does not permit** a landlord to request or accept from a tenant a security deposit exceeding one-half a month's rent. Furthermore, **I caution** the landlord that money paid by a tenant for a key deposit or security deposit is not the property of the landlord. A key deposit and security deposit are held in trust by the

landlord throughout the tenancy. A landlord may only keep all or a portion of the security deposit or key deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenant.

As the tenants' application had merit, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the tenants have established a total monetary claim in the amount of **\$2,250.00**, comprised of \$2,000.00 for the doubled security deposit, \$200.00 for the key deposit, and the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$2,250.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I find that the tenants have established a total monetary claim of \$2,250.00. I grant the tenants a monetary order under section 67 in the amount of \$2,250.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 12, 2013

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Residential Tenancy Branch

