



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for the return of double his security deposit and pet damage deposit under the *Act*, plus the recovery of his filing fee.

The tenant attended the teleconference hearing as scheduled and gave affirmed testimony. During the hearing the tenant presented his evidence. A summary of the tenant's 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 of Hearing") was considered. The tenant testified under oath that the Notice of Hearing and evidence was served on the landlord by registered mail on July 29, 2013. The tenant provided a registered mail receipt with tracking number in evidence and confirmed that the name and address matched the name of the landlord and the address for the landlord as indicated on the tenancy agreement submitted in evidence. The tenant stated that the registered mail package was successfully delivered to the landlord on August 01, 2013 as the registered mail was signed for on that date according to the online registered mail tracking website. Based on the above, I find the landlord was served with the Notice of Hearing and evidence on August 01, 2013.

### Issue to be Decided

- Is the tenant entitled to the return of double the security deposit and pet damage deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on October 20, 2011 and reverted to a month to month tenancy after June 31, 2012. Monthly rent in the amount of \$1,700.00 was due on the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 was paid by the tenants, SCT and SKT at the start of the tenancy. The tenant submitted a cheque in evidence in the amount of \$1,700.00 dated October 20, 2011, cheque #1577 indicating “damage deposit” in support that both deposits totalling \$1,700.00 were paid to the landlord at the start of the tenancy.

The tenancy ended on April 30, 2013 when the tenants vacated the rental unit. The tenant stated that he mailed the landlord their written forwarding address on paper dated June 11, 2013 on June 12, 2013 by registered mail and provided a registered mail tracking number. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. The tenant stated that the written forwarding address sent by registered mail to the landlord on June 12, 2013 was not returned to the tenants.

The tenant stated that he has attempted to call the landlord, e-mail the landlord and to date, the landlord has not communicated with the tenant regarding the return of the security deposit and pet damage deposit. The tenant stated that he is seeking the return of double the security deposit and double the pet damage deposit as the landlord has failed to return both deposits. The tenant stated that to his knowledge the landlord has not applied for authorization to retain either deposit under the *Act*. The tenant confirmed that the landlord was not given permission to retain any portion of the security deposit or pet damage deposit.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Analysis

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

**Tenant’s claim for the return of double the security deposit and pet damage deposit** – I accept that the tenancy ended on April 30, 2012 based on the tenant’s undisputed testimony. I also accept that the tenants provided their written forwarding

address to the landlord in writing on a piece of paper on June 12, 2013 by registered mail. I find the landlord was deemed to have been served with that registered mail five days later in accordance with section 90 of the *Act*, as of June 17, 2013.

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 was deemed to have received the tenants' written forwarding address as of June 17, 2013. Given the above, pursuant to section 38 of the *Act*, the landlord had to either return the full security deposit and pet damage deposit to the tenants or file an application to claim towards the security deposit and pet damage deposit within 15 days of receiving the tenants' forwarding address in writing on June 17, 2013, which the landlord failed to do. Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit and pet damage deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing June 17, 2013, having not made a claim towards the deposits.

Therefore, **I find** the tenant is entitled to the return of double the original security deposit of \$850.00 plus double the original pet damage deposit of \$850.00 for a total of the doubled deposits in the amount of **\$3,400.00**. I note that the security deposit and pet damage deposit have accrued \$0.00 in interest since the start of the tenancy.

As the tenant was successful with their application, **I grant** the tenant the recovery of the filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of **\$3,450.00**, comprised of \$1,700.00 for the doubled security deposit, \$1,700.00 for the doubled pet damage deposit, plus recovery of the \$50.00 filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$3,450.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

#### Conclusion

The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$3,450.00. This order must be served on the landlord and 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: November 14, 2013

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Residential Tenancy Branch

