



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF  
                              MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord and the Tenant. The Landlord applied for a Monetary Order for: unpaid rent or utilities; for damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep all or part of the security deposit; and to recover the filing fee from the Tenant. The Tenant applied for the return of all or part of the security deposit and to recover the filing fee from Landlord.

The Tenant appeared for the hearing and testified that she had served a copy of the Application and the Notice of Hearing documents to the Landlord by registered mail on February 22, 2014 which had been subsequently returned to her. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, I find that the Landlord was deemed served with hearing documents on February 27, 2014.

The Landlord was issued with Notice of Hearing documents by the Residential Tenancy Branch after making his Application on February 6, 2014 which detailed the same date and time to hear the both Applications. The Tenant confirmed that she had received the Landlord's Application by registered mail on February 20, 2014. However, despite the Tenant serving the Landlord for this hearing in accordance with the Act and the Landlord making an Application to be heard on this date and time, the Landlord failed to appear for the hearing which concluded at 9:15 a.m.

As a result, the Tenant's undisputed affirmed testimony provided during the hearing and her documentary evidence provided prior to the hearing was carefully considered in this decision as follows.

Issue(s) to be Decided

- Is the Tenant entitled to the return of her security deposit?

Background and Evidence

The Tenant testified that the tenancy started on October 1, 2013 for a fixed term of one year to end on September 30, 2014. A written tenancy agreement, provided as evidence, was completed and the Tenant paid a security deposit in the amount of \$447.50 on August 15, 2013 which the Landlord still retains. Rent was payable by the Tenant in the amount of \$895.00 on the first day of each month.

The Tenant testified that she vacated the rental suite on February 1, 2014 and on February 5, 2014 she registered mailed the Landlord a letter detailing her forwarding address and requesting the full amount back. The signed and dated letter was provided as evidence for this hearing.

The evidence indicates that the Landlord made the Application to keep the Tenant's security deposit the next day on February 6, 2014.

Analysis

Section 38(1) of the Act states that within 15 days of a Landlord receiving the Tenant's forwarding address, the Landlord must return the Tenant's security deposit or make an Application to keep it.

The Tenant provided the Landlord with a forwarding address in writing on February 5, 2014 in accordance with the requirements of the Act. As a result, I find that the Landlord made an Application seeking an order to keep Tenant's security deposit on February 6, 2014 within the allowable 15 day time limit provided by the Act.

However, the Landlord failed to appear for the hearing to present the merits of his Application and why he should be able to keep the Tenant's security deposit. As a result, I dismiss the Landlord's Application and order the Landlord to return the Tenant's security deposit in the amount of \$447.50 forthwith.

As the Tenant has been successful in her Application, I also award the Tenant the \$50.00 filing fee for the cost of making the Application, pursuant to section 72(1) of the Act. As a result, the Tenant is awarded a total amount of \$497.50 payable by the Landlord.

Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order pursuant to section 67 of the Act in the amount of **\$497.50**. This order must be served to the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make payment.

The Landlord's Application is dismissed **without** leave to re-apply.

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: May 23, 2014

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Residential Tenancy Branch

