



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit. The tenant named two landlords in filing this Application but neither landlord appeared at the hearing. The tenant testified that two hearing packages were placed in a single registered mail envelope and sent to the landlords on May 23, 2014. The tenant provided the registered mail tracking number and print out from Canada Post showing the male landlord picked up the registered mail on May 25, 2014.

Where a respondent does not appear at the scheduled hearing, the applicant bears the burden to prove the respondent was served with the hearing documents in a manner that complies with the Act. Section 89 of the Act provides for service of an Application for Dispute Resolution upon the other party. Section 89 provides that an Application for Dispute Resolution must be served upon each respondent. Where an applicant chooses to use registered mail to serve an Application for Dispute Resolution the applicant should send a separate registered mail envelope to each respondent. Otherwise, to place two hearing packages in one envelope would require one respondent to serve the other respondent(s), yet that responsibility is that of the applicant.

Based upon the evidence before me, I was satisfied that the male landlord was served with the tenant's Application for Dispute Resolution but I was uncertain as to whether the female respondent was in receipt of the Application. The tenant was given the choice to proceed against the male landlord or withdraw her Application for Dispute Resolution with leave to reapply. The tenant chose to proceed against the male landlord. As such, I amended the Application for Dispute Resolution to exclude the female landlord and I proceed to consider the tenant's claim against the male landlord.

It should also be noted that the tenant indicated she was seeking a monetary award of \$450.00 in the space provided on the Application for Dispute Resolution but in the details of dispute she indicated this Application for Dispute Resolution was being made

under section 38 of the Act which provides for doubling of the security deposit. Therefore, I was satisfied the tenant provided sufficient detail that points to her request for return of double the security deposit.

### Issue(s) to be Decided

Is the tenant entitled to double the security deposit?

### Background and Evidence

The tenancy started July 15, 2012 and ended on April 30, 2014. The tenant paid a security deposit of \$450.00. The tenant provided her forwarding address to the landlords by way of a letter dated April 30, 2014 that she sent to the landlords via registered mail. The landlords received the registered letter as acknowledged in their emailed response to the tenant on May 2, 2014.

The tenant testified that she did not authorize the landlords to make any deductions from the security deposit. In the email dated May 2, 2014 the landlords indicate that they would refund \$110.07 of the security deposit to the tenant but the tenant testified that she did not receive a refund of any part of her security deposit.

The tenant testified that the landlords had not prepared condition inspection reports and the landlords' previous claim for unpaid rent or utilities was dismissed with leave to reapply; however, the landlords have not reapplied.

The tenant's documentary evidence included copies of: the tenancy agreement; the mutual agreement to end tenancy; the previously issued dispute resolution decision dated March 18, 2014; the tenant's letter with forwarding address dated April 30, 2014; the landlord's email response of May 2, 2014; and, registered mail tracking information for service of this Application.

### Analysis

Unless a landlord has a legal right to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished her right to return of the security deposit; nor, did the tenant authorize the landlord to retain it in writing.

Based upon the evidence before me, I am satisfied the landlords had been provided the tenant's forwarding address in writing on or before May 2, 2014 based upon their email response of that date. Therefore, I find the landlords were obligated to comply with section 38(1) of the Act by either refunding the entire security deposit to the tenant or filing another Application for Dispute Resolution to claim against the security deposit within 15 days of May 2, 2014 and since the landlords did neither I find the tenant entitled to return of double the security deposit.

In light of the above, I provide the tenant with a Monetary Order in the amount of \$900.00 to serve and enforce. To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

#### Conclusion

The tenant has been provided a Monetary Order in the amount of \$900.00 to serve and enforce.

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: October 03, 2014

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Residential Tenancy Branch

