



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1346 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

### Preliminary Issue – Service of Dispute Resolution Package

The tenant SP testified that she served the landlord with the dispute resolution package on 15 January 2015 by registered mail. The tenant SP provided me with a Canada Post tracking number. The tenant SP testified that the dispute resolution package was returned by Canada Post as the landlord did not collect the package from the post office.

The tenant SP testified that the tenants served the landlord at the address that the landlord provided for service on all three successive tenancy agreements. The successive tenancy agreements were signed by the tenants on 23 March 2011, 24 July 2012, and 2 April 2013. The tenant SP testified that this address was a post office box in the municipality in which the landlord resides. The tenant SP testified that she had no knowledge of the landlord moving from this address.

Subsection 89(1) of the Act deals with how a dispute resolution package may be served in an application such as the tenant's:

- 89 (1)** An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:...

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;...

I find that the tenants served the dispute resolution package to an address that meets the requirements of paragraph 89(1)(c). I make this finding on the basis that the landlord provided this address over multiple years as the landlord's address for service and the tenant SP testified that the tenants have no knowledge that this address changed.

On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of their security deposits? Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant SP, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 1 May 2011 and ended 30 April 2014. Monthly rent of \$1,750.00 was due on the first. The landlord continues to hold the tenants' security deposit of \$875.00, which was remitted to the landlord in April 2011.

The tenant SP testified that the tenants provided their forwarding address by email to the landlord on 28 March 2014. The tenant SP testified that the tenants sent their forwarding address in writing to the landlord on 10 June 2014. I was provided with a copy of this letter. The tenant SP testified that the tenants served this letter to the landlord by registered mail. The tenants provided me with a tracking number.

The tenant SP testified that the tenants' did not provide consent to the landlord to keep the tenants' security deposit. The tenant SP testified that this tenancy was not subject of any application by the landlord.

#### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within fifteen days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the

Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

Section 88 governs how a forwarding address may be given under the Act:

- 88** All documents, other than those referred to in section 89 ... that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:...
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;....

I find that the tenants served the landlord with their forwarding address in writing on 10 June 2014 in accordance with paragraph 88(c) of the Act for the same reasons that I found the tenants' service of the dispute resolution was compliant with paragraph 89(1)(c) of the Act.

On the basis of the tenant SP's sworn and uncontested testimony, I find that the landlord did not have written authorization of the tenants to keep the security deposit. On the basis of the tenant SP's sworn and uncontested testimony, I find that the landlord did not return the tenants' security deposit.

I find that the tenants have proven their entitlement to the return of their security deposit.

*Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" sets out that:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

At the hearing I asked the tenant SP if the tenants were waiving their right to doubling of the deposit. The tenant SP informed me that the tenants were not. As the landlord has not filed a claim within fifteen days of receiving the tenants' forwarding address and as the landlord has not

returned the tenants' security deposit, I find that the tenants are entitled to a monetary order equivalent to the amount of their security deposit.

As the tenants have been successful in this application, the tenants are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,800.00 under the following terms:

Item	Amount
Security Deposit Return	\$875.00
Subsection 38(6) Compensation	875.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,800.00</b>

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: April 13, 2015

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Residential Tenancy Branch

