



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

At the outset of the hearing the landlord provided the correct spelling of his last name. The tenant did not dispute the spelling provided by the landlord and I amended the tenant's application to reflect the correct spelling of the landlord's name.

The tenant testified that she served the landlord with notice of this proceeding by sending them to the landlord via registered mail on November 6, 2014. The tenant provided a copy of the registered mail receipt as proof of service. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution and Notice of Hearing. The tenant had also provided written submissions and evidence to the Branch in support of her claims but the landlord denied receiving any evidence. Since the landlord denied receiving any evidence, the tenant bears the burden to prove the evidence was served upon the landlord.

I noted that the tenant filed her Application for Dispute Resolution on November 3, 2014; however, the tenant was instructed to make corrections to the application which she did and re-submitted to the Branch on November 6, 2014. The Branch then prepared a hearing package on November 6, 2014 (the corrected Application for Dispute Resolution, Notice of Hearing, and Fact Sheets) which was available for pick by the tenant on November 6, 2014. This package was delivered to the landlord; however, the tenant provided a written submission and evidence to the Service BC center on November 7, 2014 to be forwarded to the Branch.

The tenant did not make any submissions as to when and how the evidence provided to Service BC on November 7, 2014 was also sent to the landlord. Ultimately, I was unsatisfied that the landlord had been served the tenant's written submission and evidence by way of the November 6, 2014 registered mail package considering the evidence was served upon Service BC after she had mailed the hearing package to the landlord.

As this dispute relates to return of double the security deposit, I viewed the one document the tenant submitted was documentary evidence that she had provided the landlord with her forwarding address, a Facebook message. As explained in the analysis section of this decision I found the Facebook message to be insufficient to conclude she had provided the landlord with a forwarding address in writing and I found it unnecessary to adjourn the hearing so as to permit the landlord the opportunity to receive the evidence.

#### Issue(s) to be decided

Has the tenant established an entitlement to return of double the security deposit?

#### Background and Evidence

Pursuant to an oral agreement, the tenancy commenced July 18, 2014 and the tenant paid a security deposit of \$275.00. The tenant stated that she was to be credited for a pet damage deposit by performing work-in-lieu; however she did not indicate the amount of the pet damage deposit or the value of the work provided, if any, and the landlord denied this agreement was accurate. The tenant's monthly rent was \$555.00 and the tenant vacated the rental unit in the latter half of October 2014. The landlord did not prepare condition inspection reports.

The tenant testified that she gave the landlord her forwarding address in writing after she moved out, between October 17, 2014 and October 31, 2014, when she returned to the property and saw the landlord sitting on his deck. The tenant stated that she did this after she was informed of this obligation to give the landlord a forwarding address in writing at a friendship center; however, the tenant acknowledged that she did not keep a copy of the document that provided her forwarding address. The landlord denied receiving the forwarding address until he was served with the tenant's Application for Dispute Resolution.

It was also undisputed that the landlord continues to hold the security deposit; that the tenant did not authorize the landlord to make any deductions from the security deposit; and, the landlord had not filed an Application for Dispute Resolution as of the date of this hearing.

The tenant submitted that the landlord verbally told her that she would not be getting her security deposit back because security deposits are never returned and because she failed to give proper notice to end the tenancy. During the hearing the landlord stated that he was holding the security deposit because: the tenant failed to give sufficient notice to end the tenancy; the tenant had damaged the rental unit; the tenant had an additional occupant; and, the tenant did not return the keys to the rental unit. The landlord acknowledged that his only monetary claims that he would pursue against the tenant pertain to damage to the rental unit; namely scratched floors and holes in the walls.

The tenant pointed to a Facebook message in her evidence package where she indicates she provided her forwarding address; however, the Facebook message is not dated and does not include an address. Rather, the message states: I gave you my forwarding address. The landlord claimed that he was not provided that document as evidence.

The tenant attempted to introduce evidence with respect to repairs not made, loss of quiet enjoyment and harassment by the landlord as reasons she ended the tenancy; however, she had not made any monetary claims with respect to those issues and the tenancy has already ended. Therefore, I did not permit the tenant to make such submissions by way of this proceeding.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Unless a landlord has a legal right to retain the security deposit as provided under the Act, 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.

Where a tenant seeks return of double the security deposit, the tenant bears the burden to prove that the tenant provided the landlord with a forwarding address in writing, including the date it was given and the method of service. In this case, the tenant asserted that she personally served the landlord with her forwarding address in writing in October 2014 but the landlord denied the assertion. I find the tenant's evidence is insufficient for me to conclude she provided the landlord with a forwarding address in writing considering:

- I was provided disputed verbal testimony that a forwarding address was given on the deck of the landlord's unit;
- The tenant was unable to provide a specific date as to when the tenant allegedly gave the forwarding address to the landlord;
- the tenant did not provide a copy of the document she alleges was given to the landlord; and,
- the tenant pointed to a Facebook message that was undated and does not include an address, but only the statement: I gave you my forwarding address.

Since I am unsatisfied the tenant served the landlord with her forwarding address before filing this Application, I find the tenant has not established that she was entitled to double the security deposit when she filed. However, the matter of the security deposit, in its single amount, remains in the landlord's possession and by way of this Application the tenant clearly seeks return of that. Therefore, I proceed to consider whether the tenant is entitled to return of the single amount of the security deposit.

The landlord testified that the only monetary claim he would have against the security deposit is for damage to the rental unit.

Having heard the landlord did not prepare condition inspection reports, as required by sections 23 and 35 of the Act, the landlord has extinguished his right to make any claim against the security deposit for damage. Section 24(2) provides, in part:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Since the landlord stated his only monetary claim would be for damage to the rental unit and the landlord has already extinguished his right to claim against the security deposit

for damage I find it appropriate to order return of the security deposit to the tenant. I also award the tenant recovery of one-half of the filing fee she paid for this Application, or \$25.00. Accordingly, I provide a Monetary Order to the tenant in the total amount of \$300.00 to serve upon the landlord and enforce as necessary.

The landlord retains the right to file his own Application for Dispute Resolution if he wishes to pursue to the tenant for compensation for damage to the rental unit, if any, within the statutory time limit for doing so.

The tenant also retains the right to seek compensation from the landlord if she wishes to pursue the landlord for repairs not made, loss of quiet enjoyment, and harassment, if any, within the statutory time limit for doing so.

### Conclusion

The tenant was partially successful and has been provided a Monetary Order for return of the security deposit and partial recovery of the filing fee in the total sum of \$300.00 to serve upon the landlord and enforce as necessary.

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: July 22, 2015

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Residential Tenancy Branch

