



# 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 was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the Act; served by registered mail on February 06, 2015. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the Act.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Preliminary Issues

The landlord provided some written submissions prior to the hearing. The landlord requested that the hearing be postponed as the landlord is traveling in France and does not have access to a landline. I am not prepared to adjourn the hearing today pursuant to s. 6.6 of the Rules of Procedure. I find the landlord could, with reasonable effort,

access a telephone from overseas to attend the hearing or appoint an agent to act on his behalf here in Canada. I find if I allowed the adjournment it would prejudice the tenant who has already waited nearly seven months for this hearing. Consequently, the hearing will continue as scheduled.

### Issue(s) to be Decided

Is the tenant entitled to recover the security deposit?

### Background and Evidence

The tenant testified that this tenancy started on July 29, 2012 for a fixed term tenancy of one year. Since July 29, 2013 the tenancy has been a month to month tenancy. Rent for this unit is \$1,100.00 per month due on the 29th day of each month in advance. The tenant testified that he paid a security deposit of \$550.00 and a pet deposit of \$550.00. The tenant testified that originally he had lived with his girlfriend who had a cat. When his girlfriend left the unit the landlord returned the pet deposit to the tenant's girlfriend in approximately March, 2013.

The tenant testified that his roommate took over the tenancy as agreed by the landlord on January 01, 2015 and the tenant's roommate and landlord entered into a new tenancy agreement. The landlord provided an address in France to the tenant and the tenant's roommate on the tenant's roommate's new tenancy agreement. The tenant realized he did not give the landlord written notice to end his tenancy but did do so by email. On January 09, 2015 the tenant and an agent acting for the landlord signed a mutual agreement to end tenancy effective January 01, 2015. This agent did the previous paperwork with the tenant when he had moved into the unit and had signed the tenancy agreement on behalf of the landlord. The tenant testified that this person held power of attorney for the landlord. The tenant testified that he provided his forwarding address to the landlord's agent on January 09, 2015 when they signed the mutual agreement to end tenancy.

The tenant testified that the landlord has failed to retrain the tenant's security deposit within 15 days of receiving the tenant's forwarding address and the tenant did not give the landlord written permission to keep all or part of his security deposit as there was some conflict over some damage in the unit.

The tenant has provided a copy of the letter sent to the landlord with his forwarding address in documentary evidence along with the mutual agreement to end tenancy and a copy of the tenancy agreement.

The tenant seeks to amend his application to recover double the security deposit as it has not been returned within 15 days.

### Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on January 09, 2015. The tenant gave the letter to the person who was acting on behalf of the landlord at the start and end of the tenancy, the tenant may legitimately believe this person is acting on behalf of the landlord while the landlord is overseas. As a result, the landlord had until January 24, 2015 to return all of the tenant's security deposit or file a claim to keep it. As the landlord failed to do so, the tenant has established a claim for the return of double the

security deposit to an amount of **\$1,100.00**, pursuant to section 38(6)(b) of the *Act*.  
There has been no accrued interest on the security deposit for the term of the tenancy.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 38(6)(b) and 72(1) of the *Act* in the amount of **\$1,150.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: August 18, 2015

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Residential Tenancy Branch

