



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This was a hearing with respect to the tenant's application for payment of double the amount of her security deposit. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend

### Issue(s) to be Decided

Is the tenant entitled to payment of double her security deposit?

### Background and Evidence

The tenant testified at the hearing that she served the landlord with her application, Notice of Hearing and supporting documents by registered mail. She submitted a copy of a photograph of the registered mail receipt. It was sent to the Residential Tenancy Branch by fax. The faxed document was illegible.

The tenant said in her application that she moved out of the rental unit on December 1, 2015. She submitted a copy letter to the landlord dated November 27, 2015 wherein she provided her forwarding address and requested payment of her security deposit in the amount of \$485.00.

The tenant said in her application that she did not receive her deposit on December 15, 2015. She said in her application that she sent a text message to her landlord and received a reply saying that the cheque was in the mail. The tenant said she received the cheque on December 23, 2015. The tenant said that the postmark on the envelope indicated that the cheque was not mailed out until December 17, 2015.

The tenant sent by fax copies of photographs of the front and back of the envelope. The fax of the back of the envelope showed what appeared to be a Post Office

processing stamp. The date stamp was difficult to read, but it appeared to be "DE 17". The tenant said that this showed that the letter was not mailed out until December 17<sup>th</sup>, 2015.

The tenant said that she was entitled to be reimbursed a further \$485.00 because the landlord did not return her deposit within the required 15 day period.

### Analysis

Some of the tenant's faxed documents were photocopies of printed documents. The faxed copies of these documents were legible and easily readable. Other documents appeared to be copies made from photographs of documents. After transmission by fax these documents were partly or entirely illegible.

The Residential Tenancy Branch Rules of Procedure contains provisions concerning the types of evidence that are admissible. The Rules with respect to digital evidence that:

#### **3.10 Digital evidence**

Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

Some of the tenant's evidence appeared be second generation copies of photographs of the original documents, namely: a postal receipt for registered mail and pictures taken of an envelope. The photography followed by copying and faxing compromised the legibility of this evidence. In the case of the registered mail receipt, it was unreadable. The tenant said the landlord was served by registered mail, but she did know the date that it was sent.

The tenant's claim for payment of an amount equal to her security deposit is based upon section 38(1) of the *Residential Tenancy Act*. The provision requires the landlord to repay the tenant's security deposit or to make a claim with respect to it within 15 days after the date that the tenancy ends or the date that the landlord receives the tenant's forwarding address in writing, whichever is the later.

The tenant submitted that the postmark on the envelope containing the cheque from the landlord constituted proof that the landlord did not repay the security deposit within the required 15 days. I disagree with the tenant's submissions on this point.

The date stamped on the letter, although difficult to read, appears to be a mark placed on the envelope when it passed through a postal processing center; it does not allow

me to determine when the letter was mailed by the landlord. The tenant submitted that the mail would have been processed within a day of the date it was mailed and on that basis it must have been sent late. I do not accept this submission because it amounts to speculation. The tenant bears the burden of establishing that the security deposit was not repaid within the allotted time. The tenant has not established that the deposit was sent late and the tenant's application is therefore dismissed without leave to reapply. I make no order with respect to the filing fee.

Conclusion

The tenant's application is dismissed.

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: March 22, 2016

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Residential Tenancy Branch

