



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNR, MNSD, FF, O  
   MNDC, MNSD, FF

### Introduction

This review hearing was convened by way of conference call following a hearing on March 22, 2016. The landlord applied for and was successful in obtaining a review hearing limited to the issue of doubling the security deposit.

The landlord and both tenants attended the review hearing, and the landlord and one of the tenants each gave affirmed testimony. The parties were provided with an opportunity to question each other. All evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Should the order dated March 23, 2016 following the March 22, 2016 hearing respecting doubling the security deposit be confirmed, varied or set aside?

### Background and Evidence

**The landlord** testified that he received the tenant's forwarding address which was included in the tenants' written notice to end the tenancy. The landlord sent to that address by registered mail a cheque in the amount of \$650.00 as return of the security deposit in full. The registered mail was returned to the landlord on or about November 4, 2015. A copy of the registered mail envelope was provided for the original hearing, however the addressee and the address were covered up with a sticker and not readable. The landlord provided a copy of the same envelope with the application for review, which the director found was new and relevant and qualified as grounds for a review hearing. The envelope contains a hand-written address and addressee, visible with the sticker removed. The landlord also provided a copy of a Canada Post tracking print-out for the March 22, 2016 hearing, showing that the mail was sent on October 9, 2015 and available for pick-up after returning to sender on November 4, 2015. It also states that on October 29, 2015 at the receiving location, the item could not be delivered as addressed and sent to the Undeliverable Mail Office.

The landlord further testified that after receiving the mail back unclaimed, he didn't know where the tenants were until the landlord received the Tenant's Application for Dispute Resolution.

When the landlord received the cheque back, the tenants had already applied for dispute resolution and the Residential Tenancy Branch told the landlord to wait for the March 22, 2016 hearing.

When asked why the landlord didn't file the Landlord's Application for Dispute Resolution claiming against the deposit until February 25, 2016, the landlord replied that there was no particular reason.

**The tenant** testified that the tenants only wanted return of the security deposit. The landlord sent a text message to the tenant and knew what city the tenants lived in, which is not the same city as contained in the tenant's notice to end the tenancy. However, the tenants had someone checking the mail, and the cheque was never received from the landlord.

The tenant further testified that the envelope provided by the landlord as new and relevant evidence is misleading. If the landlord took the sticker off of the envelope, the names of the addressees and the address would have peeled off with the sticker. The tenant submits that the landlord added the names and address after the hearing on March 22, 2016.

#### Analysis

The *Residential Tenancy Act* states that following a review, I may confirm, vary or set aside the original Decision and/or order made at the original hearing.

I have reviewed the Decision of the director following the landlord's application for review, as well as the new evidence. The tenant questions whether or not the address would be visible after a sticker was taken off, and suggests that the landlord re-wrote the names and address on the envelope between the March 22, 2016 hearing and the landlord's application for review.

There is no dispute that the landlord received the tenants' forwarding address in the letter the tenants provided as notice to vacate the rental unit on August 28, 2016. The tenancy ended on September 30, 2015. I find that the landlord had until October 15, 2015 to return the security deposit or make an application for dispute resolution claiming against it.

The tracking print-outs provided by the landlord do not contain an address of the recipient, but a City which is the same City as the forwarding address provided by the tenants. The landlord also provided a Canada Post cash register receipt showing that registered mail was sent on October 9, 2015 and it contains the same product number. The new evidence of the landlord shows the addressee and address of the intended recipient.

The tenants' address for service contained in the Tenant's Application for Dispute Resolution is not the same forwarding address given to the landlord.

The landlord also testified that by the time the landlord received the unclaimed mail, the tenants had already served the landlord with their application for dispute resolution, and the evidence

reflects that. As a general matter of practice, an Arbitrator does not award double where the address of the tenant is given to the landlord in the Tenant's Application for Dispute Resolution.

The basis upon which I ordered double the amount of the security deposit in favour of the tenants was that the landlord waited 4 months after receiving the Tenant's Application for Dispute Resolution. However, the *Act* states that a landlord must do one or the other; return it or make a claim. I find that the landlord has established that it was sent, returned unclaimed, and the landlord had no address to serve the tenants with an application claiming against the security deposit until served with the notice of the March 22, 2016 hearing.

The landlord has provided evidence that mail was sent on October 9, 2015 to the City of the address of the tenants contained in their written notice given on August 28, 2016. I accept the testimony and new evidence, and I find that double the amount of the security deposit has not been established.

**The monetary order is hereby varied to reduce the amount owed by the landlord to the tenants from \$1,159.68 by \$650.00, the amount of the security deposit, to \$509.68.**

**Attached to this Decision is an amended order.**

#### Conclusion

For the reasons set out above, I hereby vary the monetary order made on March 23, 2016 following the March 22, 2016 hearing. The tenants will have a monetary order in the amount of \$509.68.

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: June 17, 2016

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Residential Tenancy Branch