



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for the return of double her security deposit and the recovery of the cost of the filing fee.

The tenant attended the hearing which was held by teleconference and gave affirmed testimony. The tenant was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlords did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlords by registered mail on April 6, 2016. The tenant provided two registered mail tracking numbers in evidence and confirmed that each landlord was served with their own registered mail package. Both registered mail tracking numbers have been included on the cover page of this decision for ease of reference. In addition, the tenant stated that landlord D.M. was served at the address for him provided on the tenancy agreement which was submitted in evidence, while the rental unit address was used for landlord K.W. which was signed for and accepted.

According to the online registered mail tracking information the registered mail package addressed to landlord K.W. was signed for and accepted on April 18, 2016. The registered mail package addressed to landlord D.M. was not accepted and was returned to sender. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. Based on the above, I find that landlord K.W. was served on April 18, 2016 the day the registered mail package was signed for. In addition, I find that landlord D.M. was deemed served as of April 11, 2016, which is five days after the registered mail package was mailed on April 6, 2016. I note that refusal or neglect to pick up a registered mail package does not constitute grounds for a Review Consideration.

### Issue to be Decided

- Is the tenant entitled to the return of double her security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on March 1, 2014 and reverted to a month to month tenancy after February 28, 2015. Monthly rent of \$895.00 was due on the first day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlords continue to hold.

The tenant testified that she served her written forwarding address on the landlords by regular mail on March 1, 2016. The tenant submitted a copy of her written forwarding address in evidence. The tenant stated that she received a text from landlord D.M. on March 9, 2016 acknowledging her letter and that he would be providing it to the son of landlord K.W. The tenant stated that on March 15, 2016, landlord D.M. emailed her to advise that the landlords were keeping \$300.00 of her \$400.00 security deposit. The tenant stated that she did not agree in writing for the landlords to retain any portion of her security deposit. The tenant testified that the landlords did not return any amount of her security deposit and continue to hold her \$400.00 security deposit without permission.

### Analysis

Based on the above, the undisputed testimony and documentary evidence from the tenant, and on a balance of probabilities, **I find** that the landlords have breached of section 38 of the *Act*.

There was no evidence before me to show that the tenant had agreed, in writing, that the landlords could retain any portion of the security deposit, which has accrued no interest to date. Furthermore, as landlord K.W. was served with the Notice of Hearing and Application, and landlord D.M. was deemed served with the Notice of Hearing and Application and did not attend the hearing, I find that the tenant's Application is unopposed by the landlords.

The security deposit is held in trust for the tenant by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenant. In the matter before me, **I find** the landlords did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days of the end of tenancy or the date the written forwarding address was received by the landlords, which is required under section 38 of the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlords must pay the tenant double the amount of the security deposit. The legislation does

not provide any flexibility on this issue. Therefore, I find the tenant is entitled to **\$800.00** which is double the original \$400.00 security deposit.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**.

Given the above, I find the tenant has established a monetary claim in the amount of **\$900.00**. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$900.00** owing by the landlords to the tenant. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

**I caution** the landlords to comply with section 38 of the *Act* in the future.

#### Conclusion

The tenant's application is fully successful.

The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$900.00 owing by the landlords to the tenant. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlords have been cautioned to comply with section 38 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 7, 2016

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Residential Tenancy Branch