



# Dispute Resolution Services

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 double 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 to the landlord at the address the landlord does business as a landlord on June 13, 2016. 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.

### Issue(s) to be Decided

- Is the tenant entitled to recover the security deposit?

- Is the tenant entitled to have the security deposit doubled under the provisions of s. 38 of the *Act*?

### Background and Evidence

The tenant testified that this tenancy started on July 01, 2013 for a fixed term of one year, thereafter continuing on a month to month basis. Rent for this unit was \$1,000.00 per month due on the first of each month. The tenant paid a security deposit of \$500.00 on or about July 01, 2013.

The tenant testified that on the tenancy agreement the landlord did not provide an address for the landlord for service of documents. The tenant and landlord communicated via phone, text messages and email. The landlord appeared to use the address of the rental unit as his business address as the tenant received much of the landlord's mail there, which the tenant then provided to the landlord. The tenant testified that due to this as he did not have any other address for the landlord so he sent the hearing documents to the rental address and although these were returned to the tenant the tenant believes he served the landlord in accordance with s. 89 of the *Act*.

The tenant testified that the landlord did not complete a move in or a move out condition inspection with the tenant and simply provided the tenant with a blank unsigned condition inspection report. The tenant testified that at the end of the tenancy they met at the unit and the landlord tried to negotiate with the tenant about how much the landlord would return of the security deposit. At first the landlord said he would only return \$200.00 but the tenant said that was unacceptable. The landlord said he would write the tenant a cheque there and then if the tenant accepted \$350.00 back. The tenant agreed verbally and received a cheque for this amount on April 28, 2016.

The tenant testified that the cheque for \$350.00 was returned NSF on May 09, 2016. The tenant contacted the landlord via text message and informed him the cheque was

NSF. The tenant then followed this up with an email on May 09, 2016 asking for the landlord's address, and wanting to clear the matter up. The tenant also provided his forwarding address to the landlord in this email as he did not have any other way to provide it to the landlord. The tenant testified that the landlord responded to this email on the same day and informed the tenant that he had damaged some things in the unit, that the tenant had left garbage and had not cleaned the unit. The landlord notified the tenant that his damage deposit of \$500.00 does not come close and that the matter is now closed. No address was provided by the landlord. Copies of this email exchange have been provided in documentary evidence by the tenant.

The tenant testified that the unit was left in a better conditions then it was when they moved in and therefore as the landlord has not returned any of the security deposit within 15 days of receiving the tenant's forwarding address the tenant now seeks to recover double the security deposit as no written permission was provided to the landlord for him to keep it.

### Analysis

With regard to service of the hearing documents upon the landlord; the landlord contravened s. 13(2)(e) of the *Act* by not providing an address for service of the landlord or the landlord's agent on the tenancy agreement and the tenant's undisputed evidence shows that the landlord used the rental address to receive other mail. Consequently, I am satisfied that the landlord has been served in accordance with s. 89 of the *Act* with the hearing documents.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants 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 tenants 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 tenants.

Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the undisputed evidence presented I find that the landlord did receive the tenant's forwarding address by email on May 19, 2016. I will permit this address as having been provided by email as the landlord contravened s. 13(2)(e) of the *Act* by not providing an address for service of the landlord or the landlord's agent.

As a result, I find the landlord had until June 03, 2016 to return all of the tenant's security deposit. 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 **\$1,000.00**, 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 **\$100.00** 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), 67 and 72(1) of the *Act* in the amount of **\$1,100.00**. This Order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord 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: December 05, 2016

---

Residential Tenancy Branch