



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit. The landlord did not appear at the hearing. The tenant submitted that the hearing package was sent to the landlord via registered mail on June 23, 2016 and the tenant's evidence and written submission was sent to the landlord on August 19, 2016. I heard that both registered mail packages were successfully delivered. Registered mail receipts, including tracking numbers, were provided as proof of service. I also noted that the Residential Tenancy Branch had received a response from the landlord on December 6, 2016. I was satisfied that the landlord was notified of this proceeding and I continued to hear from the tenant without the landlord present.

At the commencement of the hearing the tenant's advocate informed me that there were two witnesses waiting outside of the office where she and the tenant were located. The witnesses remained excluded until called to testify. During the hearing, only one witness was called to testify.

As for the landlord's evidence, Rule 7.4 of the Rules of Procedure provide for the following where a party submits evidence but does not appear at the hearing:

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The tenant acknowledged receiving the landlord's response. I noted the landlord appeared to make submissions that the tenant was responsible for damage to the rental unit but that position is irrelevant to the application before me since the landlord has not filed a damage claim against the tenant. Accordingly, I did not further explore the issue

of damage to the rental unit. However, as the tenant was informed during the hearing, the landlord remains at liberty to file his own Application for Dispute Resolution if he chooses to pursue the tenant for damage, within the statutory time limit for doing so, and this decision does not extinguish that right.

The landlord's agent also prepared and submitted a type-written response that indicates a forwarding address was not received by the landlord on May 18, 2016. Giving a forwarding address is a relevant fact that must be established in this case. Accordingly, I heard from the tenant and his witness during the hearing as to that matter.

#### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

#### Background and Evidence

The tenancy started on April 1, 2015 and ended April 30, 2016. The tenant paid a security deposit of \$250.00 and was required to pay rent of \$500.00 on the first day of every month. The landlord did not prepare move-in or move-out condition inspection reports.

The tenant testified that he did not authorize the landlord to retain any part of his security deposit in writing. The tenant submitted that on May 18, 2016 he and his mother drove to the residential property, where the landlord also lived, to deliver to the landlord a forwarding address in writing. The landlord was standing in the driveway when they arrived. The tenant handed the landlord a note containing his forwarding address but the landlord crumpled it up and pushed it back into the car where the tenant was sitting. At the same time the landlord stated that according to the Residential Tenancy Branch he did not have to refund the security deposit.

The tenant's mother was called to testify. She testified that she drove her son to the landlord's residence and when they pulled in the driveway she saw the landlord standing in the driveway. The tenant opened the passenger car window and handed the piece of paper containing his forwarding address to the landlord but the landlord crumpled it up and pushed it back in the car. At the same time the landlord was waiving papers in his hand and stated that he did not have to return the security deposit according to the Residential Tenancy Branch. The tenant's mother asked to see the paperwork but in response the landlord stated that he could not speak English.

To date, the landlord has not refunded the security deposit and has not filed an Application for Dispute Resolution seeking authorization to retain it.

In addition to the oral evidence presented to me, I was provided a written submission and copies of: the tenancy agreement; the piece of paper given to the landlord on May 18, 2016; and, a signed witness statement of the tenant's mother as to the events that took place on May 18, 2016.

The tenant had his sister available to testify and a written witness statement of his sister; however, I determined it unnecessary to consider the evidence of the tenant's sister since she was not present on May 18, 2016. Rather, her statements appeared to relate to the condition of the rental unit at the end of the tenancy which is not relevant to this case. As indicated previously, the condition of the rental unit is not relevant since the landlord has not filed a claim against the tenant and the only purpose of this hearing is to determine whether the landlord administered the security deposit in accordance with the Act.

### Analysis

Unless a landlord has a legal right to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished his right to return of the security deposit; nor, did the tenant authorize the landlord to retain the security deposit in writing. Rather, it would appear that the landlord extinguished his right to make a claim against the security deposit for damage since he did not prepare condition inspection reports.

Based upon the evidence before me, I am satisfied the tenant delivered to the landlord his forwarding address in writing when he handed the note to the landlord in person in the driveway of the residential property on May 18, 2016. I accepted the tenant's version of events and I found they were supported by his witness, whom I found to provide consistent and credible testimony. Further, the testimony of the tenant and the tenant's witness was subject to examination during the hearing. In contrast, the written statement of the landlord's agent was given very little weight considering the landlord

did not appear at the hearing to provide testimony and be subject to further examination. Having found the tenant did give the landlord his forwarding address on May 18, 2016, I find the landlord's decision to push the piece of paper containing the tenant's forwarding address back into the car is a consequence that the landlord must bear. I find the tenant met his obligation to present the landlord with his forwarding address on a piece of paper. Accordingly, I find the landlord remained obligated to comply with section 38(1) of the Act by either refunding the security deposit to the tenant or filing an Application for Dispute Resolution within 15 days of May 18, 2016. Since the landlord did neither I find the landlord violated section 38(1) and must now pay the tenant double security deposit under section 38(6) of the Act.

In light of all of the above, I grant the tenant's request for a Monetary Order in the amount of \$500.00 to serve and enforce upon the landlord.

### Conclusion

The tenant is provided a Monetary Order in the amount of \$500.00 to serve and enforce upon the landlord.

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 15, 2016

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Residential Tenancy Branch