



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD O FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on July 26, 2016. The Tenant filed seeking a monetary order for the return of double their security deposit and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant affirmed that he served the Landlord with copies of the same documents that he had served the Residential Tenancy Branch (RTB). The Landlord acknowledged receipt of these documents and while there were no issues regarding service or receipt raised by the Landlord, he noted that the evidence did not have page numbers written on it. The Landlord confirmed he did not submit documentary evidence in response to the Tenant's application. After a spot check of the evidence received by the Landlord I was satisfied he was served copies of the same documents received by the RTB. As such I considered the relevant submissions from the Tenant as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all relevant submissions presented in accordance with Rules of Procedure have been considered, they may not all appear in this Decision.

Issue(s) to be Decided

Has the Tenant proven entitlement to the return of double his security deposit at this time?

Background and Evidence

The undisputed evidence was the Tenant entered into a month to month tenancy agreement which commenced on September 17, 2015. Rent of \$700.00 was payable on or before the first of each month. On September 17, 2015 the Tenant paid \$350.00 as the security deposit. No condition inspection report forms were completed at move in or move out.

The Tenant submitted that on January 31, 2016 he personally served the Landlord with written notice to end his tenancy effective February 29, 2016. He stated he sent a copy to the Landlord the next day, on February 1, 2016, via email.

The Tenant testified his notice to end tenancy did not list his forwarding address. I heard him state he provided the Landlord with his forwarding address via email on May 7, 2016, as per the email submitted in his evidence. The Tenant did not serve the Landlord with his forwarding address in any other format.

The Landlord confirmed he did not return the security deposit. I heard the Landlord stated he was of the opinion the Tenant had no right to the return of his deposit as he had failed to pay 1/3 of the cost of the hydro bill and he cause damage to the rental unit.

I heard the Tenant state that the address written on his application for Dispute Resolution was still his service address. I then heard the Landlord confirm, during the hearing, that he had the Tenant's forwarding address which was written on the Tenant's application for Dispute Resolution. Based on the foregoing, I issued an oral order that the Landlord had received the forwarding address as of the time of this hearing. I informed both parties of the extinguishment clause provided for under sections 24 and 36 of the *Act* (as copied to the end of this Decision) which relates only to a landlord's claim for damage to the rental unit and does not relate to a claim for other losses such as unpaid rent or utilities.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After

careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 38(1) of the *Act* stipulates that within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 of the *Act* states that despite any other provision of this Act, if a tenant does not give a landlord their forwarding address in writing, within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Based on the Tenant's submissions the Landlord was not served the Tenant's forwarding address in writing; rather, he was sent the address via email. Email is not an approved method of service provided for under section 88 of the *Act*. Therefore, I conclude that at the time the Tenant's application for Dispute Resolution was filed the Landlord was under no obligation to return the security deposit, as they had not yet been served with the Tenant's forwarding address in writing, in accordance with the *Act*. Accordingly, I conclude that this application was premature. I therefore dismiss this application with leave to re-apply.

The Tenant was not successful with his application; therefore, I declined to award recovery of his filing fee.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this *Act* applies.

As noted above, during the hearing the Tenant confirmed the address listed on his application for Dispute Resolution (as written on the front page of this Decision) was still his service address. The Landlord confirmed during the hearing that he had that address on the application for Dispute Resolution before him. Accordingly, I ordered the Landlord had received the Tenant's forwarding address as of January 30, 2017, pursuant to section 62(3) of the *Act*. As such the Landlord has until February 14, 2017

to either return the full security deposit to the Tenant or file an application for Dispute Resolution for a claim against any amounts that were not previously extinguished.

### Conclusion

The Tenant was not successful with his application and it was dismissed with leave to reapply.

This decision is final, legally binding, 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: January 30, 2017

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Residential Tenancy Branch

## ***RESIDENTIAL TENANCY ACT***

### **Consequences for tenant and landlord if report requirements not met**

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2  
*opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

**36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.