



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KORECKI REAL ESTATE SERVICE INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant's agent (the tenant) stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on August 11, 2016. The landlord confirmed receipt of the package in this manner on August 15, 2016. The tenant stated that the landlord was served with the late evidence package by Canada Post Registered Mail on February 2, 2016. The landlord confirmed receipt of this package as claimed. The landlord stated that the tenant was served with the submitted late documentary evidence on February 1, 2016 via Canada Post Registered Mail. The tenant confirmed receipt of this package as claimed by the landlord. Neither party raised any issues in proceeding regarding the late documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence I am satisfied that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order money owed or compensation for damage or loss and return of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2016 on a fixed term tenancy ending on June 30, 2017 as shown by the submitted copy of the signed tenancy agreement dated June 7, 2016. The monthly rent was \$1,200.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$600.00 was paid on June 7, 2016. A condition inspection report for the move-in was completed by both parties on June 30, 2016.

The landlord stated that the \$600.00 security deposit was returned to the tenant by cheque on August 17, 2016. The tenant disputes this stating that the security deposit was not returned until August 20, 2016. The landlord stated that she was unable to provide any evidence to support her claim that the security deposit was returned on August 17, 2016 as it was sent via regular mail and that there is no way to track the delivery.

The tenant seeks a monetary claim of \$2,400.00 which consists of:

\$600.00	Return of Security Deposit
\$600.00	Compensation re: Sec 38(6)
\$1,200.00	Return of 1 <sup>st</sup> Months Rent

Both parties agreed that the tenant did not move-in after taking possession of the rental unit. The tenant stated that he did not move-in due to damage in the unit, and that the unit was not clean. The tenant stated that he feared for the safety of his family and decided not to move-in. The tenant stated that notice to end the tenancy was provided to the landlord on July 23, 2016. The landlord disputed this stating that no notice in writing has ever been received from the tenant. The tenant was unable to provide any evidence to support her claim. Both parties confirmed that the tenant's forwarding address in writing was provided to the landlord on August 11, 2016.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of both parties and find that the tenant provided their forwarding address in writing to the landlord on August 11, 2016. I accept the tenant's evidence over that of the landlord that the landlord returned the \$600.00 security deposit to the tenant on August 20, 2016. I find that the landlord returned the \$600.00 security deposit on the 9<sup>th</sup> day after receiving the tenant's forwarding address in writing. As such, the tenant is not entitled to compensation under section 38(6) for failing to comply with the Act.

Since the landlord returned the original \$600.00 security deposit to the tenant as confirmed by the tenant on August 20, 2016, this portion of the tenant's application is dismissed.

As for the tenant's claim for compensation of \$1,200.00 for return of July 2016 rent, I find that the tenant has failed. This tenancy was to begin on July 1, 2016 as shown by the submitted copy of the signed tenancy agreement. The tenant claims that notice to end the tenancy was provided to the landlord on July 23, 2016. The landlord disputes this claim. The tenant is unable to provide any evidence to support this claim. In any event this is a fixed term tenancy of 1 year ending on June 30, 2017. Even if I accept that the tenant was allowed to breach the 1 year fixed term tenancy by prematurely ending it, the Act requires that the tenant provide 1 months' notice to end the tenancy. 1 Months' Notice would have required the tenant to provide this notice to the landlord no later than May 30, 2016. As such, I find that that tenant failed to provide proper notice to the landlord and that compensation of 1 Months rent of \$1,200.00 for July 2016 is dismissed.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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: February 08, 2017

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Residential Tenancy Branch