



# 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 by conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on October 6, 2016 for the return of the security deposit and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Landlord during the 30 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that he served the Landlord with a copy of the Application and Hearing Package to the service address detailed on the signed tenancy agreement. This was done by registered mail on October 11, 2016. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. The Landlord testified that the documents were returned back to him by Canada Post and were marked as being refused.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find the Landlord was deemed served with the required documents on October 16, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Tenant as follows.

During the hearing, the Tenant withdrew his claim to recover utilities he had paid in this tenancy and for a stopped cheque charge. The Tenant only wanted the issue of the security deposit to be dealt with in this hearing. Therefore, I dismissed these two portions of the Tenant's Application and provide leave to re-apply.

Issue(s) to be Decided

Is the Tenant entitled to the return of his security deposit?

Background and Evidence

The Tenant testified that this tenancy started on October 15, 2012 for a fixed term of one year after which the tenancy continued on a month to month basis thereafter. Rent under the signed tenancy agreement was payable in the amount of \$1,200.00 per month.

The Tenant testified that although the tenancy agreement states that rent was payable on the first day of each month and that a \$1,200.00 security deposit was paid, the rent was payable on the 15<sup>th</sup> day of each month and the Tenant paid \$600.00 as a security deposit before the tenancy began.

The Tenant testified that he emailed the Landlord on July 5, 2016 informing him that he was ending the tenancy on September 15, 2016. That email also provided for the Tenant's forwarding address. The Tenant submitted the email into evidence along with a read receipt which shows that the Landlord read the email on the same day it was sent.

The Tenant testified the Landlord also failed to complete a move-in and move-out Condition Inspection Report (the "CIR") in this tenancy. The Tenant confirmed that he had not given any permission for the Landlord to keep his security deposit and now claims for the return of it.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on September 15, 2016 through the Tenant's notice provided to the Landlord pursuant to Section 45(1) of the Act.

While email is not a recognized form of serving documents under the Act, I accept the Tenant's undisputed oral evidence and email correspondence that the Landlord was put on notice of the tenancy ending as well as the Tenants' forwarding address on July 5, 2016.

Therefore, the Landlord would have had 15 days from September 15, 2016 onwards, which was the end date of the tenancy, to deal properly with the Tenant's security deposit pursuant to the Act. There is no evidence before me that the Landlord made an Application within 15 days of the tenancy ending or obtained written consent from the Tenant to withhold it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act.

It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of his security deposit in the amount of \$1,200.00.

As the Tenant has been successful in his Application, I also grant the \$100.00 filing fee pursuant to Section 72(1) of the Act. As a result, the Tenant is issued with a Monetary Order for a total amount of \$1,300.00.

This order must be served on the Landlord and may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment.

Copies of the order are attached to the Tenant's copy of this Decision. The Landlord may also be held liable for any enforcement costs incurred by the Tenant.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is granted a Monetary Order for \$1,300.00 which comprises double the security deposit and the Tenant's filing fee. The remainder of the Tenant's monetary claim is dismissed with leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 06, 2017

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Residential Tenancy Branch