



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, FF

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of double the pet damage deposit or security deposit; and
- recovery of the filing fee paid for this application from the landlords.

The landlords' agent (the "Landlord") and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

At the start of the hearing the landlord requested an adjournment to be able to submit additional evidence in regards to the condition of the rental unit after the tenant moved out. The tenant opposed the adjournment on the basis that the landlord had sufficient time to submit their evidence prior to the hearing.

In considering the landlord's request for an adjournment, I have taken into consideration the criteria for granting an adjournment set out in Rule 7.9 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). I have also taken into consideration Rule 7.17 of the Rules of Procedure which allows an arbitrator to determine the relevance, necessity and appropriateness of evidence.

I find that evidence of the condition of the rental unit is not relevant to the issues before me arising from the tenant's application. I find that the evidence of the condition of the rental unit would be relevant if the landlords had an application before me seeking to keep part of the damage deposit as a result of damage or loss caused by the tenant. As there is no such application before me, I deny the landlord's request for an adjournment as I find that the additional evidence would not be considered in any event. As such, I find that there is no prejudice to the landlord in not granting the adjournment request.

### Issues to be Decided

- Is the tenant entitled to a monetary order for double the return of the pet damage deposit or security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlords?

### Background and Evidence

The undisputed evidence established that the tenant entered into a one year fixed term tenancy starting November 1, 2014 and ending October 31, 2015. Rent in the amount of \$2,600.00 was due on the first day of each month. The tenant paid a security deposit in the amount of \$2,600.00 on November 1, 2014.

On December 12, 2016 the tenant sent their forwarding address to Landlord A.J. by email; and to Landlord H.P. by text. The tenant received a text response from Landlord H.P. that same day indicating that Landlord A.J. will be in touch. Landlord A.J. responded to the tenant's email on December 21, 2016. Landlord H.P. and Landlord A.J. were acting as agents for the owner, Landlord E.J.

On January 9, 2017, the tenant received a cheque from the landlords in the amount of \$2,250.00 returning a portion of the security deposit. The cheque was sent to the tenant's forwarding address by registered mail. The cheque was dated December 10, 2016. The registered mailing was sent on January 6, 2017.

The landlord testified that \$350.00 was deducted from the security deposit to cover the costs to clean the rental unit after the tenant moved out.

The facts set out above were not disputed by the parties.

The tenant is seeking return of double the security deposit.

The tenant is also seeking recovery of their filing fee for their application from the landlords.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 38(1) of the *Act* requires a landlord to either return the security or pet damage deposit or file an Application to claim against it, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, whichever is the latest.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return double the tenant's security deposit, plus applicable interest.

Policy Guideline #17 of the Residential Tenancy Branch's Policy Guidelines explains that unless the tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

The forwarding address must be given to the landlord in accordance with section 88 of the *Act*. Section 88 of the *Act* lists the following ways documents must be given or served on the landlord as follows:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person carries on business as a landlord;
- ...
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1); and
- (j) by any other means of service prescribed in the regulations.

Section 71(2)(c) of the *Act* allows an Arbitrator to determine that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenant provided a security deposit in the amount of \$2,600.00 on November 1, 2014. I find that the tenancy ended on October 31, 2015.

I find that the tenant sent her forwarding address to the landlords on December 12, 2016 in writing, by text and email. While s.88 of the *Act* does not authorize texts and email as a method of delivery, pursuant to section 71(2) (c) of the *Act*, I find that the landlords were sufficiently served with the tenant's forwarding address. In making this finding, I have taken into consideration the fact that the landlords responded to the tenant's text and email sent on December 12, 2016; and the landlords sent a cheque to the tenant at her forwarding address. Therefore, I find that there is sufficient evidence that the landlords received the tenant's forwarding address on December 12, 2016.

As the landlords received the tenant's forwarding address after the end of the tenancy, I find that the landlord was required to repay the security deposit or make an Application for dispute resolution to claim against the deposit within 15 days of December 12, 2016.

I find that the landlord returned a portion of the security deposit in the amount of \$2,250.00 on January 9, 2017, the date the tenant received it by registered mail. Therefore, I find that the landlords have not returned the tenant's security deposit in full within 15 days of receiving the tenant's forwarding address. I find that the landlords have not applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. Furthermore, I find that the landlords have not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

Based upon the foregoing, in accordance with section 38 of the *Act*, I find that the tenant is entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period.

As the tenant has been successful in their application, I find that the tenant is also entitled to recover their filing fee from the landlord.

Based upon the foregoing, I find the tenant is entitled to a monetary order in the total amount of \$3,050.00 as follows:

Item	Amount
Return of Security Deposit	\$ 2,600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$ 2,600.00
Less Security Deposit Returned	\$2,250.00
<b>Subtotal</b>	<b>\$2,950.00</b>
Filing Fee	\$ 100.00
<b>Total Monetary Order</b>	<b>\$ 3,050.00</b>

### Conclusion

The tenant's application is successful.

The tenant is granted a monetary Order in the amount of \$3,050.00 which is for the filing fee and double the amount of the tenant's security deposit. This monetary Order must be served on the landlords as soon as possible. Should the landlords fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: April 21, 2017

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Residential Tenancy Branch