



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This review hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Tenant states that the Landlord was originally served with the application for dispute resolution and evidence package (the “Materials”) on September 2, 2016 by registered mail. The Tenant states that she also sent a second copy of the Materials on April 19, 2017 by registered mail. The Tenant provided the tracking number for this mail. The Landlord states that she did not receive any copies of the Tenant’s application and materials as the Landlord is out of the country. The Landlord states that her residential address is the address set out in the Tenant’s application. The Landlord received the original decision on this application and I note that this original decision fully sets out the Tenant’s application details and evidence to support the claims.

Section 89 of the Act provides that an application for dispute resolution must be given in one of the following ways:

- (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 registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Given the Tenant's receipts and provision of tracking numbers I find that the Tenant served the Materials as required.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials regardless of whether the Landlord collected the mail or not. Given the Landlord's receipt of the original decision I find that the Landlord has been fully informed of the contents and details of the Tenant's application and that there is no prejudice to the Landlord in proceeding with this review hearing on that basis.

#### Issue(s) to be Decided

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

Is the Tenant entitled to compensation and recovery of the filing fee?

#### Background and Evidence

The tenancy was to start on June 1, 2016 however the unit was not ready for the Tenant and the Tenant was not able to move into the unit until June 4, 2016. Rent of \$880.00 was payable on the first day of each month. The Tenant must also pay 25% of the costs of gas and hydro. At the outset of the tenancy the Landlord collected \$440.00 as

a security deposit. The tenancy ended on July 31, 2016. No move-in or move-out condition report was completed with a copy to the Tenant.

The Tenant states that she provided her forwarding address by registered mail on August 2, 2016. The Tenant provided the receipt and tracking number for this mail. The Tenant states that on September 12, 2016 mail was received from the Landlord. The Tenant states that the envelope contained a letter dated August 30, 2016 and a cheque for \$452.48. There is no dispute that this amount was based on return of the full security deposit plus a credit of \$86.79 for the loss of 3 rental days minus \$74.31 for the cost of utilities. The Landlord states that the bills for the utilities were included in the envelope. The Tenant states that no bills were ever received by the Tenant despite repeated requests that the Landlord send those copies. There is no dispute that the Tenant did not provide written authorization to the Landlord for any deduction from the security deposit.

The Tenant claims return of double the security deposit in the amount of \$880.00. The Landlord states that the security deposit was returned as soon as the Landlord picked up her mail. The Landlord states that she was out of town for some period of time.

The Tenant claims compensation of \$85.00 for the loss of 3 days use of the rental unit at the onset of the tenancy. The Landlord does not dispute this claim.

The Tenant states that the Landlord failed to return the Tenant's post-dated cheques and the Tenant claims the stop payment charges incurred on those cheques in the amount of \$30.00. The Landlord states that the post-dated cheques were included in the mail sent to the Tenant with the above noted cheque.

### Analysis

Section 90 of the Act provides that a document served by registered mail is deemed to be received on the 5<sup>th</sup> day after it is mailed. Given the Tenant's receipt dated August 2, 2016 for registered mail I accept the Tenant's evidence that the forwarding address was

sent to the Landlord on August 2 and was deemed to have been received by August 7, 2016.

Section 38 of the Act provides that within 15 days after the later 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 for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Tenant did not receive the return of the security within 15 days of the provision of the forwarding address I find that the Landlord failed to return the security deposit within the time required. As a result I find that the Landlord must now pay the Tenant **\$880.00** plus zero interest.

Section 5(4) of the Schedule to the Regulations provides that the landlord must return to the tenant on or before the last day of the tenancy any post-dated cheque for rent that remains in the possession of the landlord. Preferring the Tenant's more persuasive evidence I find that the Landlord failed to return the Tenant's postdated cheque and that the Tenant is therefore entitled to the **\$30.00** claimed for the costs of stop payments.

Based on the Landlord's agreement I find that the Tenant has substantiated the compensation of **\$85.00** claimed for the loss of 3 days use of the rental unit at the outset of the tenancy.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,095.00** ( $880.00 + 30.00 + 85.00 + 100.00$ ). Deducting the \$452.48 already paid to the Tenant leaves **\$642.52** owed by the Landlord to the Tenant.

Section 82(3) of the Act provides that following a review the original order may be confirmed. For the above reasons I confirm the original decision and monetary order.

Conclusion

The original decision and monetary order is confirmed.

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: May 05, 2017

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Residential Tenancy Branch