



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested return of double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference on June 5, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on December 5, 2016 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of December 10, 2016 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and

or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

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

### Background and Evidence

The Tenant testified that the tenancy began March 1, 2016. Monthly rent was payable in the amount of \$800.00 and the Tenant paid a security deposit in the amount of \$400.00.

The Tenant testified that he moved out of the rental unit on August 31, 2016.

The Tenant further testified that the Landlord failed to perform a move in or move out condition inspection report.

The Tenant provided the Landlord with his forwarding address on October 20, 2016 by email. Documentary evidence submitted by the Tenant confirms the parties regularly communicated by email. The Tenant stated that he spoke to the Landlord and she stated that she would not return the deposit.

The Tenant confirmed that the Landlord did not apply for dispute resolution.

### Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), 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 do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

I accept the Tenant undisputed evidence that he did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on October 20, 2016.

The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished her right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. If the Landlord believes she is entitled to monetary compensation from the Tenant, she must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing her to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

### Conclusion

Having made the above findings, I Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$800.00**, comprised of double the security deposit (2 x \$400.00).

The Tenant is given a formal Monetary Order in the amount of **\$800.00** and must serve a copy of this Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: June 05, 2017

---

Residential Tenancy Branch