



# 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 the tenants' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of the security deposit; and
- recovery of the filing fee paid for this application from the landlord.

The landlord's agent (the "landlord") and tenant R.K. appeared at the teleconference hearing and gave affirmed testimony. Tenant R.K. also appeared as agent for tenant K.A. During the hearing the landlord and tenants 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

The tenants entered into separate tenancy agreements with the landlord starting on October 1, 2016 and ending January 31, 2017. Tenant R.K. paid rent in the amount of \$750.00 and tenant K.A. paid rent in the amount of \$850.00. Tenant R.K. paid a security deposit in the amount of \$375.00 and tenant K.A. paid a security deposit in the amount of \$425.00 on September 19, 2016. The tenants provided the landlord with their same forwarding address in a letter that was sent by registered mail. The landlord acknowledges receiving the tenants' forwarding address in writing on February 6, 2017.

The landlord indicated that she was only prepared to proceed with the claims relating to tenant R.K. and not those relating to tenant K.A. The landlord argued that tenant K.A. needs to bring her own separate application, particularly, as there was no address indicated on the tenants' application for tenant K.A. The landlord also relied upon the fact that only a copy of tenant R.K.'s tenancy agreement was submitted as evidence by the tenants.

Section 73(2) of the *Act* allows an arbitrator to hear 2 or more applications for dispute resolution at the same time where the disputes are between the same landlord.

Rule 2.10 of the Rules of Procedure (the "Rules") permit applications for dispute resolution to be joined and heard at the same hearing so that the resolution process will be fair, efficient, and

consistent. In considering whether to join applications, the following criteria are to be considered:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

If tenant K.A. had brought a separate application, I would likely have found that the undisputed facts established the criteria set out in Rule 2.10 for hearing both tenants' applications at the same time. I find that the tenants' claims against the security deposit paid to the landlord pertain to the same residential property; involve the same landlord; the remedies sought by both tenants are identical and the same facts and findings would be considered in both applications.

I find that the landlord had sufficient notice of the claim made in regards to tenant K.A.'s security deposit, particularly as the amount of the monetary claim included the amounts for both deposits. I find that the landlord was not prejudiced by the fact that there was no address for tenant K.A. set out on the tenants' application. The landlord acknowledged having been given the same forwarding address for both tenants within approximately 6 weeks prior to being served with the tenants' application. I have also taken into consideration the fact that the landlord did not submit any evidence nor make a counter application that would require an address for tenant K.A.

Based on the foregoing, I find that it would be appropriate to hear both tenants' claims relating to their security deposits at this hearing which are included in the one application so that the resolution process will be fair, efficient and consistent. For the reasons given above, I find that the landlord would not be prejudiced by hearing both of the tenants' claims at this hearing under the one application.

The landlord indicated that they had not received copies of photographs of the condition of the unit submitted by the tenants. I find that the photographs are not relevant such that I have not considered them. Therefore, I find that the landlord has not suffered any prejudice.

#### Issues to be Decided

- Are the tenants entitled to a monetary order for return of the security deposit?
- Are the tenants entitled to recovery of the filing fee paid for this application from the landlord?

#### Background and Evidence

The undisputed evidence established that the tenants entered into separate tenancy agreements with the landlord starting on October 1, 2016 and ending January 31, 2017 for the same residential property. Tenant R.K. paid rent in the amount of \$750.00 and tenant K.A. paid rent in the amount of \$850.00. On September 19, 2016, tenant R.K. paid a security deposit in the amount of \$375.00 and tenant K.A. paid a security deposit in the amount of \$425.00. The tenancy for both tenants ended on January 31, 2017. The tenants provided the landlord with the same forwarding address in a letter that was sent by registered mail from both tenants. The landlord acknowledged receiving the tenants' forwarding address in writing on February 6, 2017.

The landlord testified that the tenants had given the landlord permission to retain the security deposits if the landlord did not find tenants to rent the unit starting February 1, 2017. The tenants acknowledged having given permission for the landlord to keep the deposits but now argue that the landlord is not entitled to the deposits. The landlord testified that the new tenants did not move in as of February 1, 2017, but that she did not know the exact move in date.

The tenants are seeking \$800.00 for the return of the security deposits paid to the landlord. The tenants acknowledged that they were not waiving any entitlement to the return of double the amount of their security deposit.

The tenants are also seeking to recover the \$100.00 filing fee for their application from the landlord.

### 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, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. The start of the 15 days is triggered by the date of the latest event to occur.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit. The landlord must also pay the tenant double the amount of the security deposit with interest payable on the original amount of the security deposit.

Residential Tenancy Branch Policy Guideline #17 also states that 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 arbitrator will order the return of double the deposit.

Section 38(2) of the *Act* provides that the landlord is not required to pay the security deposit or pet damage deposit, or both, if the tenant's right to the return of the deposit has been extinguished under section 36(1) of the *Act*.

Section 38(4) of the *Act* allows a landlord to retain all or part of a security deposit if at the end of a tenancy, the tenant agrees in writing.

Although there may have been an initial agreement between the parties for the landlord to keep all or part of the security deposit, there is insufficient evidence that the tenants' consent was in writing as required by section 38(4) of the *Act*. Therefore, I do not accept the landlord's argument that the landlord is entitled to keep the security deposits pursuant to section 38(4) of the *Act* on the basis of the tenants' consent.

Based upon the undisputed testimony of the parties, I find that both tenancies ended on January 31, 2017. I find that the landlord received the tenants' forwarding address on February 6, 2017, the date the landlord acknowledged receipt. As the latest triggering event occurred on February 6, 2017, I find that the landlord was required to return both of the security deposits or file an application for dispute resolution seeking to retain the deposits within 15 days. I find that the landlord did not take any of these steps. Therefore, I find that the tenants are entitled to a monetary order for the return of double the amount of the security deposit, with interest payable on the original amount of the deposit, in accordance with section 38(6) of the *Act*. There is no interest payable over this period.

Although the tenants have not claimed for return of double the security deposit, I find that the tenants did not specifically waive the doubling of the security deposits. Therefore, I am required to award double the security deposits in accordance with the *Act*.

As the tenants' application is successful, I find that the tenants are entitled to recover the \$100.00 filing fee for their application from the landlord.

Based upon the foregoing, I find that the tenants are entitled to a monetary order in the amount of \$ 1,700.00 as follows:

Item	Amount
Return of Tenant R.K.'s Security Deposit	\$ 375.00
Return of Double the Security Deposit	\$ 375.00
Return of Tenant K.A.'s Security Deposit	\$ 425.00
Return of Double the Security Deposit	\$ 425.00
Filing Fee	\$ 100.00
<b>Total Monetary Order</b>	<b>\$ 1,700.00</b>

#### Conclusion

The tenants' application is successful.

The tenants are granted a monetary Order in the amount of \$1,700.00 for double the security deposits and the filing fee. This monetary Order must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it 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 09, 2017

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Residential Tenancy Branch