



# 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 return of double the security deposit. The landlord did not appear at the hearing. The tenant testified that the hearing documents and evidence were sent to the landlord at the landlord's address of residence by registered mail on May 15, 2017. The registered mail was unclaimed by the landlord. The tenant provided a copy of the registered mail envelope, including tracking number, as proof of service. Section 90 of the Act deems a person to be served with documents five days after mailing, even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, the landlord is deemed served with the hearing documents and I continued to hear from the tenant without the landlord present.

The tenants misspelled the landlord's last name on the Application and the Application was amended to reflect the landlord's last name as spelled on the tenancy agreement.

### Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

### Background and Evidence

The tenancy started on July 1, 2016 and the tenants paid a security deposit of \$565.00. The tenants participated in a move-in inspection with the landlord; however, the landlord did not prepare a move-in condition inspection report. The tenants vacated the rental unit on March 25, 2017 and participated in a move-out inspection with the landlord; however, the landlord did not prepare a move-out inspection report with them. The tenant gave the landlord a forwarding address on a piece of paper at the end of the move-out inspection on March 25, 2017.

The tenant testified that the tenants did not authorize the landlord to make any deductions from the security deposit in writing. The landlord sent the tenants two cheques dated May 9, 2017 for \$182.50 each as a partial refund of the security deposit at the forwarding address the tenant provided to the landlord on March 25, 2017. The tenants did not cash the cheques as they did not agree with the partial refund submitted so long after the tenancy ended and this Application for Dispute Resolution was filed shortly thereafter.

The landlord has not filed an Application for Dispute Resolution to make a claim against the security deposit.

The tenants provided documentary evidence that includes: a copy of the tenancy agreement and addendum; receipts for payment of rent and the security deposit; the note with the tenant's forwarding address; the front side of the two cheques for \$182.50; letters the landlord wrote to the tenants on May 5, 2017 and May 9, 2017; and, the registered mail envelope that was returned to sender.

### Analysis

Section 38(1) of the Act provides that unless a landlord has a legal right to retain all or part of the security deposit, a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

A landlord may obtain the legal right to make deductions from a security deposit by obtaining the tenant's written authorization to do so; obtaining authorization from the Director, as delegated to an Arbitrator; or, if the tenant has extinguished his/her right to its return.

In this case, I was not provided any evidence to suggest the tenants extinguish their right to return of the security deposit; nor, did the tenants authorize the landlord to retain any part of the security deposit in writing and the landlord did not obtain the authorization to make deductions from an Arbitrator. Accordingly, I find the landlord was obligated to either return the security deposit to the tenants, in the full amount, or file an Application for Dispute Resolution to claim against it within 15 days of March 25, 2017 and the landlord failed to do so. Therefore, I find the landlord violated section

38(1) of the Act and must now pay the tenants double the security deposit pursuant to section 38(6) of the Act.

I have found that March 25, 2017 is the end of the tenancy as this is the date the tenants vacated the rental unit and returned possession of the rental unit to the landlord. It is also the date the tenants provided a forwarding address in writing to the landlord.

In light of the above, I grant the tenants' request for return of double the security deposit in the sum of \$1,130.00 and I further award the tenants recovery of the \$100.00 filing fee paid for this application. Accordingly, the tenants are provided a Monetary Order in the sum of \$1,230.00 to serve and enforce upon the landlord.

### Conclusion

The tenants are provide a Monetary Order in the sum of \$1,230.00 for return of double the security deposit, and recovery of the filing fee, to serve and enforce upon the landlord.

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: October 11, 2017

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Residential Tenancy Branch