



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit. The landlord did not appear at the hearing. The tenant testified that the hearing package and evidence was served to the landlord in person on May 17 or 18, 2017 by a friend of the tenant who lives next to the rental unit (this person is named on the cover page of this decision and referred to by initials JW here). JW was called testify. JW testified that the tenant gave her the hearing documents and evidence in an envelope while JW was visiting her at the tenant's new residence. JW and her husband saw the landlord outside of the rental unit on May 18, 2017 and went to the rental unit property and proceeded to give the envelope to the landlord. After hearing from both the tenant and JW, I was satisfied the landlord was served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

### Issue(s) to be Decided

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

### Background and Evidence

The one-year fixed term tenancy started on September 1, 2015 and ended on August 31, 2016. The tenant paid \$800.00 toward the security deposit, but \$25.00 was refunded to the tenant, leaving \$775.00 in trust for the security deposit. The tenant was required to pay rent of \$1,550.00 on the first day of every month. I heard that the landlord did not propose a move-in inspection and provided a vague reference to doing a move-out inspection but a specific date and time were not proposed to the tenant.

The tenant testified that she did not authorize the landlord to retain any part of the security deposit in writing. The tenant had provided her forwarding address to the landlord in an email and the landlord filed an Application for Dispute Resolution on September 15, 2016 to make a claim for compensation and against the security deposit (file number provided on cover page of this decision). The hearing took place on March 15, 2017 and the landlord's claim was dismissed without leave on March 15, 2017. The landlord's Application for Dispute Resolution provides a service address for the tenant that the tenant stated is the same as the address that the tenant had provided to the landlord in the email. The Arbitrator presiding over the hearing to deal with landlord's Application for Dispute Resolution referred to the tenant's obligation to provide a forwarding address in writing as opposed to text message or email. After the March 15, 2017 hearing ended the tenant proceeded to send her forwarding address to the landlord by way of a letter that was sent to the landlord via regular mail. The tenant sent the letter to the landlord's service address that appeared on the landlord's Application for Dispute Resolution. The tenant did not receive a refund of the security deposit and now seeks return of double the security deposit.

As documentary evidence the tenant provided a copy of: the tenancy agreement; a receipt for the security deposit; the tenant's email giving the landlord notice of her intention to end the tenancy and the landlord's emailed response; and, the letter containing the tenant's forwarding address sent on March 15, 2017.

### 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 tenant extinguish her right to return of the security deposit; and, the tenant did not authorize the landlord to retain

any part of the security deposit it in writing. That landlord had applied for authorization to retain the security deposit when he filed his Application for Dispute Resolution on September 15, 2016 but his application was dismissed without leave on March 15, 2017. I am satisfied by the unopposed evidence that the landlord was in receipt of the tenant's forwarding address. The tenant's forwarding address appears on the landlord's Application for Dispute Resolution but the tenant followed up by sending it to the landlord again by way of a letter mailed to him on March 15, 2017. As provided in section 90 of the Act I find the landlord deemed to be in receipt of the tenant's letter five days after mailing on March 20, 2017. Accordingly, I find the landlord was obligated to return the security deposit to the tenant within 15 days of March 20, 2017 which is April 4, 2017. Since the landlord did not, I find the landlord must now pay the tenant double the security deposit.

Since the net amount of the security deposit held by the landlord is \$775.00, I find the landlord's obligation to pay the tenant double the security deposit is calculated as  $\$775.00 \times 2$ , or \$1,550.00. I further award the tenant recovery of the \$100.00 filing fee she paid for this applicant. Therefore, I provide the tenant with a Monetary Order in the total sum of \$1,650.00 to serve and enforce upon the landlord.

### Conclusion

The tenant has been provided a Monetary Order in the sum of \$1,650.00 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 12, 2017

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Residential Tenancy Branch