



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing convened as a result of 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 October 26, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 respective 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 paid?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The Tenant testified that the tenancy began December 1, 2015. Monthly rent was payable in the amount of \$1,800.00. He confirmed that he paid a security deposit in the amount of \$1,000.00. The Tenant testified that they moved out of the rental unit at the end of April 2016 and sent his forwarding address to the Landlords by registered mail on May 5, 2017. The tracking number for this package is included on the unpublished cover page of this my Decision. The Tenant confirmed that the information he received from Canada Post was that this package was received and signed for.

The Tenant testified that he originally applied for dispute resolution for return of his deposit; however the Arbitrator found that he had served both Landlords with one registered mail package and therefore his application was dismissed with leave to reapply. The file number for that application is included on the unpublished cover page of this my Decision.

The Tenant re-applied for dispute resolution on May 17, 2017.

The Tenant testified that the Landlord failed to return his security deposit such that he sought return of double the deposit paid and recovery of the filing fee.

The Landlord responded as follows.

He confirmed the Tenant paid a security deposit in the amount of \$1,000.00. He further confirmed that he did not return the deposit to the Tenant.

The Landlord testified that at the time the tenancy ended he was living with family members as well as other people as roommates. He further confirmed that while someone at his residence signed for the registered letter, he did not see the letter from the Tenant with his forwarding address until he received the Tenant's application materials.

The Landlord further confirmed that he did not make an application for dispute resolution within 15 days of receipt of the Tenant's forwarding address.

### Analysis

The Tenant applies for return of double his security deposit pursuant to section 38 of the *Residential Tenancy Act* which 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 Tenants evidence that he did not agree to the Landlords retaining any portion of his security deposit.

I further accept the Tenant's evidence that he sent his forwarding address to the Landlord by registered mail on May 5, 2017. *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 that the Landlord received the Tenants forwarding address in writing on May 10, 2017.

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*.

The Landlord stated that he retained the Tenant's security deposit because of a "disagreement". The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, the Landlord must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing him 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.

Having made the above findings, I must Order, pursuant to sections 38, 67 and 72 of the Act, that the Landlord pay the Tenant the sum of **\$2,100.00**, comprised of double the security deposit (2 x \$1,000.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant is given a formal Monetary Order in the amount of **\$2,100.00** and must serve a copy of the 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.

Dated: October 27, 2017

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Residential Tenancy Branch