



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD, FF

### **Introduction**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$2500 for the return of their security deposits.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Policy Guidelines provide that a party cannot avoid service by refusing to claim their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was served on the respondent by mailing, by registered mail to where the respondent resides and that it was sufficiently served even though the respondent failed to claim his registered mail. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The parties entered into a tenancy agreement that provided that the tenancy would start on August 24, 2017. The rent was \$2500 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$500 on August 15, 2018 and \$2000 on August 21, 2017. On August 23, 2017 the landlord advised the tenant that the rental unit was not available for them to move in. The tenant ended the tenancy at that time and the tenants did not move in. .

The tenant(s) provided the landlord with his/her their forwarding address in writing on August 28, 2017.

#### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

#### Analysis

The tenants paid a security deposit of \$500 on August 15, 2017 and \$2000 on August 21, 2017. The Residential Tenancy Act does not permit a landlord to charge a non refundable security deposit. Thus I determined the landlord holds \$2500 as a security deposit.

I determined the tenancy ended on August 24, 2017 when the landlord failed to provide vacant possession. The tenants gave the landlord written notice they were not moving in on August 28, 2017. The letter also contain the tenant's forwarding address and a demand the two deposits be returned. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit. However, the tenant(s) specifically waived the claim for doubling of the security deposit at the hearing. As a result I determined the Tenants are entitled to the return of the two deposits which total \$2500.

#### Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2500 plus the sum of \$100 in respect of the filing fee for a total of \$2600.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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 final and binding on both parties.**

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: April 10, 2018

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Residential Tenancy Branch