



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened in response to an application for dispute resolution by the Tenant for the return of the security deposit pursuant to section 38 of the *Residential Tenancy Act* (the “Act”). The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

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

### Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on October 1, 2011 and ended on August 31, 2017. Rent of \$1,675.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,675.00 as a security deposit and \$50.00 as a pet deposit. The security deposit has not been returned to date.

The Tenant states that she sent her forwarding address to the Landlord by registered mail on September 27, 2017 to the address provided for service to the Landlord as contained in the tenancy agreement. The Tenant provided the tracking number for this registered mail and states that the mail was returned uncollected. The Tenant states that she also sent the forwarding address by email on October 5, 2017. The Tenant states that this was the primary method of communication between the Parties and that the Landlord responded to the email containing the forwarding address.

The Landlord states that he believed he could collect a greater security deposit amount than half the rent as the unit was furnished. The Landlord states that he did not collect any mail while he was at the rental unit after the end of the tenancy and that he did not have anyone collecting the mail while he was away. The Landlord states that the Tenant left the unit with damages and wishes to collect for these damages.

The Tenant confirms that she is seeking return of double the security deposit.

### Analysis

Section 19(1) of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. There is nothing in the Act that allows the collection of a greater amount for a security deposit for any reason. Based on the undisputed evidence that the Landlord collected the same amount of a security deposit as the monthly rent I find that the Landlord breached the Act. I caution the Landlord against collecting more than allowed for any current or future tenancies.

Section 90 of the Act provides that a document given or served by mail is deemed to be received on the 5<sup>th</sup> day after it is mailed. Given the Tenant's supporting postal evidence I find on a balance of probabilities that the Tenant sent her forwarding address to the Landlord by registered mail on September 27, 2017 and that the Landlord is deemed to have received it on October 2, 2017 regardless of whether the Landlord collected the mail or not.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the above finding that the Landlord received the Tenant's forwarding address by registered

mail and based on the undisputed evidence that the Landlord received the forwarding address by email as well, that email was a primary method of communication between the Parties, and that the Landlord responded to the Tenant's email provision of the forwarding address, I find that the Landlord received the forwarding address at the earliest on October 2 and at the latest on October 5, 2017.

As the Landlord did not return the security and pet deposit and did not make an application to claim against the security deposit within 15 days receipt of the forwarding address, I find that the Landlord must now pay the Tenant double the combined security and pet deposit plus zero interest of **\$3,450.00** (\$1,675.00 + \$50.00 x 2). I order the Landlord to pay this amount to the Tenant forthwith.

If the Tenant left damages to the unit beyond reasonable wear and tear or failed to leave the unit reasonably clean, the Landlord remains at liberty to make an application claiming compensation for those damages.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,450.00**. If necessary, this order may be filed in the Small Claims 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 05, 2018

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Residential Tenancy Branch