



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 15, 2018 (the "Application"). The Tenants applied for a monetary order in the amount of \$575.00 for the return of their security deposit. The Tenants also sought reimbursement for the filing fee.

The Tenants appeared at the hearing and provided affirmed testimony. Nobody appeared at the hearing for the Landlord. The hearing process was explained to the Tenants and neither had questions when asked.

The Tenants had submitted evidence prior to the hearing. I addressed service of the hearing package and Tenant's evidence. Tenant D.P. said the hearing package was sent by registered mail to the Landlord April 23, 2018. He said the package was mailed to the rental address and addressed to the Landlord. The Tenants said the Landlord was living in the upper suite at the rental address during their tenancy and when they moved out. Tenant D.P. said the package did not indicate upper suite. I understood the Tenants' testimony to be that there is only one mailbox for both the upper and lower suite at the rental address. The Tenants said the package was returned to them.

The Tenants had submitted a Canada Post Customer Receipt with Tracking Number 1 on it. The Customer Receipt is addressed to the Landlord at the rental address. With the permission of the Tenants, I looked up Tracking Number 1 on the Canada Post website. The website shows a notice card was left indicating where and when to pick up the package. It shows the package was unclaimed and returned to sender.

The Tenants testified that a second package with the Tenants' evidence was sent to the Landlord by registered mail to the rental address on May 4, 2018. Tenant J.L. provided Tracking Number 2. Tenant J.L. said the package was returned. With the permission of the Tenants, I looked up Tracking Number 2 on the Canada Post website. The website

shows a notice card was left indicating where and when to pick up the package. It shows the package was unclaimed and returned to sender.

I accept the undisputed testimony of the Tenants and find the hearing package and evidence were sent to the Landlord by registered mail at the rental address. I accept the undisputed testimony of the Tenants that the Landlord lives in the upper suite at the rental address and has one mail box for both suites. I accept the undisputed testimony of the Tenants that the hearing package was addressed to the Landlord and this is supported by the Customer Receipt. Based on the Canada Post website, I find notice cards were left for the Landlord to pick up the packages.

I find the hearing package and evidence were served in accordance with section 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). I accept the undisputed testimony of the Tenants about when the hearing package and evidence were sent and I find they were sent in sufficient time to allow the Landlord to prepare for, and appear, at the hearing.

I accept the testimony of the Tenants that the packages were returned to them; however, the Landlord is not permitted to refuse or avoid service. I note that refusal or neglect to accept service is not a ground for review under the *Act*.

I was satisfied of service and proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony provided. I have only referred to the evidence I find relevant in this decision.

The Tenants confirmed they were requesting double the security deposit back if I found the Landlord breached the *Act*.

#### Issue to be Decided

1. Are the Tenants entitled to a monetary order in the amount of \$1,150.00 being double the \$575.00 security deposit?

### Background and Evidence

The Tenants testified as follows. There was an oral tenancy agreement between the Landlord and Tenants regarding the rental unit. The tenancy started November 15, 2017. The security deposit of \$575.00 was paid November 14, 2017. The Tenants submitted a receipt from the Landlord to the Tenants dated November 14, 2017 which states \$575.00 was paid for the “damage” deposit. The Tenants submitted rent receipts from the Landlord regarding the rental unit.

The Tenants testified that they moved out of the rental unit March 18, 2018 and that the Landlord still has the security deposit.

The Tenants testified further as follows. They provided the Landlord with their forwarding address in writing on March 26, 2018 by mail. They mailed it to the rental address. The package was addressed to the Landlord. The package did not indicate upper suite but there is only one mail box for the rental address. The Tenants submitted a copy of the letter sent to the Landlord.

Tenant D.P. said they know the Landlord received the forwarding address as he sent a text about it. This was submitted as evidence. It is a text from the Landlord to Tenant J.L. dated April 1, 2018 referring to Tenant D.P.’s request and outlining an issue with the door key. It is in response to a text from Tenant J.L. asking when she can get the “damage” deposit back.

The Tenants testified that the Landlord did not have an outstanding monetary order against them at the end of the tenancy. They said they did not agree in writing that the Landlord could keep some or all of the security deposit. The Tenants were not aware of the Landlord applying for dispute resolution to keep the security deposit at any point.

The Tenants testified that the Landlord never offered them an opportunity to do a move-in or move-out inspection and these inspections were never done. They said they never received a Condition Inspection Report.

The Tenants said they are agreeable to the Landlord keeping \$10.00 of the security deposit for movie rentals.

### Analysis

I accept the undisputed testimony of the Tenants and find the following. There was a tenancy agreement between the Landlord and Tenants regarding the rental unit. This is supported by the rent receipts. The Tenants paid a security deposit of \$575.00 to the Landlord. This is supported by the security deposit receipt. The Tenants moved out of the rental unit March 18, 2018 and the Landlord still has the security deposit.

Based on the undisputed testimony of the Tenants, I find the following. The Tenants provided the Landlord with their forwarding address in writing March 26, 2018. This is supported by the letter submitted as evidence. I find the text messages submitted provide some support that the Landlord received the forwarding address. In the absence of evidence about when the Landlord received the forwarding address, section 90 of the *Act* deems it received five days after it was mailed. Therefore, I find the Landlord received the forwarding address on March 31, 2018.

I accept the undisputed testimony of the Tenants that the Landlord did not have an outstanding monetary order against them at the end of the tenancy and that they did not agree in writing that the Landlord could keep the security deposit. Based on the undisputed testimony of the Tenants, I find the Landlord did not apply for dispute resolution to keep the security deposit.

I accept the undisputed testimony of the Tenants that the Landlord never offered them an opportunity to do a move-in or move-out inspection and never provided a completed Condition Inspection Report.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy. Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or apply for dispute resolution to keep it within 15 days of receiving the Tenants' forwarding address in writing on March 31, 2018. The Landlord did not repay the security deposit or apply for dispute resolution to keep it.

The Tenants could not have extinguished their right to return of the security deposit under section 24(1) or 36(1) of the *Act* as the Landlord never gave them an opportunity to do a move-in or move-out inspection.

Based on my findings, the Landlord did not have authority under the *Act* to retain the security deposit.

I find the Landlord did not comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenants double the security deposit. However, the Tenants agreed at the hearing that the Landlord could keep \$10.00 of the security deposit for movie rentals.

I note that the condition of the rental unit upon move-in and move-out is irrelevant to this application. If the Landlord believed the Tenants damaged the unit, the Landlord was required to apply for dispute resolution claiming against the security deposit for the damage. The Landlord was not entitled to keep the security deposit simply because he believed the unit was damaged.

I find the Tenants are entitled to a Monetary Order in the amount of \$1,130.00. I have arrived at this amount by subtracting the \$10.00 for movie rentals from the \$575.00 security deposit and then doubling the remainder. There is no interest owed on the security deposit as the percentage owed has been 0% since 2009.

Given the Tenants were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

### Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$1,230.00 and I grant this Order. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 15, 2018

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Residential Tenancy Branch