



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD

### Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested return of her security deposit.

The hearing was conducted by teleconference on June 21, 2018. Only the Tenant, an outreach worker for the Tenant, and a witness called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant's witness, P.E., confirmed that the parties did not enter into a formal written tenancy agreement. She noted that the Landlord completed a Shelter Information Form for the Ministry of Social Development and Social Innovation wherein he noted the corporation named on the Application as the property owner and himself as the Landlord's agent. P.E. confirmed that all rent was paid directly to the Landlord, R.A. For the purposes of this my Decision I will refer to the Landlord in the singular.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:21 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and her outreach worker and witness and I were the only ones who had called into this teleconference.

As the Landlord did not call in, service of the Tenant's hearing package was considered. The Tenant's witness, P.E., testified that she served the Landlord with the Notice of Hearing and the Application on February 22, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*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 the Landlord was served by registered mail as of February 27, 2018.

P.E. stated that the registered mail package was returned; she then personally served the Landlord on March 19, 2018.

I accept P.E.'s testimony and find that the Landlord was duly served with notice of the hearing and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's 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.

#### Issue to be Decided

Is the Tenant entitled to return of the security deposit?

#### Background and Evidence

The Tenant testified that the tenancy began June 1, 2017. Monthly rent was payable in the amount of \$500.00 and the Tenant paid a security deposit in the amount of \$250.00.

The Tenant stated that she moved from the rental unit at the end of December 2017.

The Tenant provided the Landlord with her forwarding address in writing by letter dated January 11, 2018. A copy of that letter was provided in evidence before me.

The Tenant stated that she did agree to the Landlord retaining any portion of her security deposit. She also stated that to her knowledge the Landlord did not make an application for dispute resolution for an order to retain the deposit.

#### Analysis

The Tenant applies for return of her security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads 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 Tenant's and her witness' undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I find the Tenant did not agree to the Landlord retaining any portion of her security deposit.

I find that the Landlord received the Tenant's forwarding address by way of her letter dated January 11, 2018 which I find was received on January 16, 2018 (5 days after mailing as provided for in section 90 of the *Act*).

The Landlord failed to apply for arbitration, within 15 days of receipt of the Tenant's forwarding address as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only retain the deposit with the Tenant's written consent or an Order of an Arbitrator. . 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 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$500.00**, comprised of double the security deposit (2 x \$250.00).

#### Conclusion

The Tenant is granted a Monetary Order in the amount of **\$500.00** 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.

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 21, 2018

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Residential Tenancy Branch