



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD, FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of double the security deposit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the tenant entitled to the return of double the security deposit and the filing fee?

### **Background and Evidence**

The parties agreed that the tenancy started in February 2017, ended on September 01, 2018 and that the landlord was provided with a forwarding address on September 02, 2018. The tenant made this application on September 17, 2018. The landlord stated that she had sent the tenant an e-mail transfer for the full amount of the security deposit on September 17, 2018. The landlord stated that she had not received the notice of hearing prior to sending the money transfer to the tenant. The tenant agreed that the e-transfer was available for her to cash on September 17, 2018.

The tenant is claiming the return of double the deposit because she believes that the landlord returned the deposit after the legislated time frame of 15 days had expired.

## **Analysis**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

The parties agreed that the landlord was provided with a forwarding address on September 02, 2018 and repaid the security deposit on September 17, 2018. I now must determine whether the landlord returned the deposit within the legislated time frame of 15 days.

The Residential Tenancy Branch *Rules of Procedure* defines "days" as follows

- a) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- b) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

Pursuant to section d of the definition of "days", I find that the day that the forwarding address was provided to the landlord is the first day and must be excluded from the calculation, of the number of days. Accordingly, the 15<sup>th</sup> day of the legislated time frame is September 17, 2018. The tenant agreed that she received the deposit on September 17, 2018

Therefore, I find that the tenant's application was premature, because she did not wait for the legislated time frame to expire before making application for dispute resolution.

Although the tenant claimed that she made the application for dispute resolution based on advice from an information officer, I have no information to establish upon what statement of fact by the tenant that that advice was based.

The role of the information officer is to provide information, not advice as to the rights and obligations of landlords and tenants under the legislation. Information officers do not act as advocates and their role is not to dispense specific advice to landlords or to tenants. I do not find that the tenant was justified in making the decision to apply for dispute resolution in reliance upon the supposed advice.

Since the tenant has already received the return of the deposit and is not entitled to the return of double the deposit, the tenant has not proven her case and must bear the cost of filing her application

### **Conclusion**

The tenant's application is dismissed in its entirety.

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: January 07, 2019

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Residential Tenancy Branch