



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 4, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed.

The Tenant attended the hearing and provided testimony. However, the Landlord did not appear. The Tenant testified that he sent his application and evidence to the Landlord by registered mail on October 12, 2018, to the address the Landlord had listed as his "address for service" on the Tenancy Agreement. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to be served with this package on October 17, 2018, the fifth day after it was mailed.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Is the Tenant entitled to compensation for loss or money owed?

### Background and Evidence

The Tenant stated that monthly rent was \$695.00 and was due on the 15<sup>th</sup> of the month. The Tenant stated that the tenancy only lasted a month and a half, as he only needed a place temporarily. The Tenant expressed that it was always the plan to move out after 1.5 months, at the end of August 2018. The Tenant stated that he paid a security deposit in the amount of \$350.00, and the Landlord has not sent any of it back.

The Tenant stated that there was some confusion surrounding the move-out date, as evidenced by some partial text message threads provided into evidence. The Tenant stated that towards the end of August 2018, he was out of town, preparing to move, and he was conversing with the Landlord by text message. At this point, the Tenant stated that he told the Landlord that he could not meet up on Monday, August 27, 2018, because he was “out” of the rental unit. The Tenant stated that the Landlord interpreted this as him actually moving out, but he meant it as being out of town temporarily. The Tenant stated that he was expecting to have occupancy of the rental unit until August 31, 2018, as initially agreed, but on August 30, 2018, he found that the Landlord had moved someone else into the rental unit. The Tenant stated that this ended his tenancy early by 1.5 day, and it cost him a night’s accommodation, gas, and food, which he wants to be compensated for.

The Tenant is seeking \$270.00 for the above inconvenience/expense (\$170.00) and the expense he paid to file this application (\$100.00).

The Tenant stated that he is also seeking double the security deposit because the Landlord didn’t return any of his deposit. The Tenant stated he provided his forwarding address in writing on August 28, 2018, by text message. A copy of this message was provided into evidence, and the Tenant also pointed out that the Landlord received and responded to this message.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant’s forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to

do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

I find August 30, 2018, reflects the end of the tenancy, as this is the last day the Tenant had possession of the rental unit. This is also the day the new Tenants moved in. I note the Tenant provided his forwarding address, as per the documentary text message evidence, on August 28, 2018. I find the Landlord received the Tenant's forwarding address in writing on this day.

In determining that the Landlord received the Tenant's forwarding address "in writing" when it was sent by text message, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

I was further guided by section 6 of the *Electronics Transactions Act*, which stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As it appears the Landlord received and responded to this text message, I find that the Landlord was sufficiently served with the Tenant's forwarding address.

I note the parties never reached any formal agreement about any deductions from the security deposit. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from

receipt of the forwarding address in writing or the end of the tenancy (whichever is later). In this case, the latter of these two dates is August 30, 2018, the date the tenancy ended. As such the Landlord had until September 14, 2018, to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did not return the deposits in full nor did he file an application for dispute resolution and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security and pet deposit (\$350.00 x 2).

Next, I turn to the Tenant's request to for compensation, due to expenses he incurred as a result of the tenancy ending a day earlier than expected. After considering the totality of the testimony and evidence on this matter, I find there was a history of text message exchanges between the Landlord and the Tenant. It appears this was a major method of communication but it also led to some ineffectiveness and inaccuracy. I also note that there was some misunderstanding about whether or not the Tenant had moved out when the Landlord re-rented the unit. I find the Tenant's choice of language, and telling the Landlord he was "out", right around the time when he had already established that he was moving out, contributed to the outcome. I find the Tenant is partly responsible for the tenancy ending how and when it did, based on his choice of words, and the lack of clarity around what being "out" meant.

I find the Tenant has failed to establish that the Landlord should be responsible for this amount (\$170.00). The Tenant has not met the burden of proof to substantiate his claim. As such, I dismiss this portion of the application.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was largely successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to a monetary order as follows:

- Double the security and pet deposit  $\$350.00 \times 2 = \$700.00$
- Filing fee - \$100.00

Total: \$800.00

Conclusion

The Tenant is granted a monetary order pursuant to Section 38 and 67 in the amount of **\$800.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: February 5, 2019

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Residential Tenancy Branch