



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:55 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

As only the tenants attended the hearing, I asked the tenants to confirm that they had served the landlord with their evidence and the Notice of Dispute Resolution Proceeding for this hearing. The tenants testified that they served the landlord with two packages, both sent to the address the landlord provided as his address for service on the tenancy agreement. The first package was sent by Canada Post registered mail on November 10, 2018 and included their Application for Dispute Resolution, notice of hearing documents and all the tenants' evidence except for two items, which were included in the second package as explained below. The tenants provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. The tenants testified that the package was returned to them as "unclaimed".

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

*Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

Therefore, I find that the landlord was served with the notice of this hearing and the tenants' evidence on November 15, 2018, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

The tenants' testified that they sent the landlord a second package by Canada Post regular parcel on February 14, 2019, without the signature option, which included new evidence consisting of an email that was not available at the time the first package was mailed, and an Amendment to the original Application to seek monetary compensation equivalent to the amount of the security deposit pursuant to section 38 of the *Act*.

#### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? And if so, is the tenant entitled to statutory compensation equivalent to the value of the security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. This fixed-term tenancy began on February 1, 2017 with a scheduled end date of July 31, 2018, at which time the tenancy converted to a month-to-month tenancy. Monthly rent of \$1,575.00 was payable on the first of the month. At the beginning of the tenancy, the tenants paid the landlord a security deposit of \$787.50. The landlord continues to hold this deposit.

The tenants testified that the landlord did not participate in the condition inspections of the rental unit at the beginning or end of the tenancy. The tenants explained that the landlord lived out of town and did not have an agent to act on his behalf. Therefore, the tenants completed the condition inspection reports on their own.

The tenants testified that they ended the tenancy and moved out on September 30, 2018.

The tenants testified that they provided their forwarding address to the landlord by email as it was written on the move-out condition inspection report which they sent to the landlord as an email attachment on October 16, 2018. The tenants testified that they provided a written copy of the condition inspection report, which contained their forwarding address, in their evidence package sent to the landlord by Canada Post registered mail on November 10, 2018 in preparation for this hearing.

The tenants testified that they had discussed deductions to their security deposit with the landlord, but the parties were unable to come to agreement. Therefore, the tenants confirmed that they had not provided written authorization to the landlord to withhold all or a portion of the security deposit.

### Analysis

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 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

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

In this case, the tenants testified that they provided the landlord with their forwarding address electronically via email on October 16, 2018. Email is not one of the acceptable methods for providing written notice as set out in section 88 of the *Act* noted below:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

However, the tenants' Application for Dispute Resolution, contained in their Notice of Dispute Resolution Proceeding package that was served upon the landlord on November 10, 2018 by registered mail for this hearing, contains a written "Address for Service of Documents" for the tenants, as well as a written copy of the condition inspection report with the tenants' forwarding address noted on it.

Accordingly, I deem that the landlord is now in receipt of a written forwarding address for the tenants as provided in the tenants' Application for Dispute Resolution for this hearing sent by registered mail. This finding triggers the landlord to take one of the following actions under section 38(1) of the *Act* as follows:

- (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.

As such, I find the tenants' Application to recover the security deposit is premature and the landlord may still address the tenants' security deposit in accordance with the above-noted provisions of section 38 of the *Act*. Given this finding, I do not find that the tenants are entitled to recover the filing fee from the landlord for this application.

To clarify, this means that the landlord has 15 days from the deemed receipt date of this decision to address the tenants' security deposit in accordance with section 38 of the *Act*. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlord fail to address the security deposit within that timeline, the tenants will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

### Conclusion

Accordingly, I dismiss the tenants' Application with leave to reapply to request the return of double the security deposit, should the landlord fail to address the security deposit in accordance with 38 of the *Act*, within 15 days of the deemed receipt date of this decision. The tenants bear the cost of the filing fee for this application.

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: March 18, 2019

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Residential Tenancy Branch