



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on January 4, 2019, wherein the Tenant sought return of his security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on April 26, 2019. Only the Tenant called into the hearing (although his mother called in briefly, disconnected and then did not reconnect). The Tenant gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:45 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 I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on January 8, 2019 by registered mail. He further testified that on January 23, 2019 he served the Landlord his evidence package. A copy of the registered mail tracking numbers for both packages provided on the unpublished cover page of this my Decision.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 and reads in part as follows:

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 the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served with notice of this hearing as of January 13, 2019 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.

Preliminary Matters

The Tenant confirmed his email addresses during the hearing as well as his understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Tenant entitled to return of his security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The tenant testified that this tenancy began September 1, 2018. Monthly rent was \$800.00 and the Tenant paid a security deposit of \$450.00.

The Tenant testified that he regularly communicated by text message to the Landlord. Copies of these text messages were provided in evidence and which confirmed the parties regularly communicated by text message. The Tenant further stated that he sent her his forwarding address as well as his request for return of his security deposit by text message and could see that she received the message.

The Tenant testified that on September 23, 2018 the Landlord sent the Tenant his security deposit by cheque; however the cheque was not honoured such that he did not receive the funds. Introduced in evidence was a copy of a text message from the Tenant to the Landlord on October 15, 2018 wherein the Tenant informs her that her cheque was not honoured by the bank. On November 8, 2018 the Tenant sent another text message asking for a response.

Although the parties regularly communicated by text message throughout the tenancy the Landlord failed to respond to the Tenant after he informed her that her cheque was not honoured.

The Tenant testified that he then sent his forwarding address to the Landlord by email on November 25, 2018. The Landlord did not respond.

As the Tenant suspected the Landlord was purposely ignoring his electronic communication, the Tenant's mother also sent the Tenant's forwarding address to the Landlord by email. The Tenant's mother utilizes a feature whereby she is notified when the recipient of an email reads the email; the Tenant testified that his mother was notified that the Landlord received her email.

The Tenant confirmed that he was also charged \$35.00 due to the fact the Landlord's cheque was not honoured. In the claim before me the Tenant sought return of double the security deposit paid, the \$35.00 fee, as well as recovery of the \$100.00 filing fee.

Analysis

The Tenant applies for return of his 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 testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's undisputed evidence that he did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlords received the Tenants forwarding address for the purposes of section 38. I base this finding on the fact that following receipt of the Tenant's text message the Landlord sent a cheque to the Tenant on September 23, 2018 representing return of this security deposit. I find the Landlord acknowledged receipt of the Tenant's request as well as his address.

Although the Landlord sent a cheque to the Tenant, that cheque was not honoured such that the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$900.00**, comprised of double the security deposit (2 x \$450.00).

I also find that the Tenant was charged **\$35.00** due to the Landlord's dishonoured cheque. The Tenant informed the Landlord of this in his electronic communication such that I find she would

have reasonably anticipated he would seek recovery of this sum. I therefore award the Tenant \$35.00.

Having been successful in his application, I find the Tenant is also entitled to recover the **\$100.00** filing fee pursuant to section 72 of the *Residential Tenancy Act*.

Conclusion

The Tenant is entitled to monetary compensation from the Landlord in the amount of **\$1,035.00** for the following:

2 x \$450.00 (Security deposit)	\$900.00
N.S.F. fee	\$35.00
Filing fee	\$100.0
TOTAL AWARDED	\$1,035.00

In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$1,035.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: May 8, 2019

Residential Tenancy Branch