



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MNSD

### Introduction

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

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38.

The landlord, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that his advocate had permission to speak on his behalf at this hearing. This hearing lasted approximately 46 minutes.

The landlord intended to call two witnesses at this hearing. However, the landlord confirmed that their evidence was related to a separate damages application that is set for a future hearing date in September 2019. As noted on page 4 of the review decision, the landlord is not permitted to join her damages application or discuss damages to the rental unit at this hearing, as this is not relevant to the tenant's original claim for the return of his security deposit. Therefore, I notified the landlord that her witnesses were not relevant to this hearing and they were not required to testify.

### Preliminary Issue - Previous Hearings and Service of Documents

The original participatory hearing in this matter occurred on December 17, 2018 ("original hearing") after which a decision of the same date was issued ("original decision") by a different Arbitrator. The original decision granted the tenant a monetary order for the return of double the value of his security deposit, totalling \$525.00 ("original monetary order") against the landlord.

The landlord applied for a review of the original decision, alleging that she did not receive the tenant's original application so she was unable to attend the original hearing. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated June 7, 2019 ("review decision"). As per the review decision, the landlord was required to serve the tenant with a copy of the review decision and the new notice of review hearing.

The tenant confirmed receipt of the above review documents. Accordingly, I find that the tenant was duly served with all of the required review documents, as per sections 89 and 90 of the *Act*.

#### Preliminary Issue - Service of Tenant's Original Application and Evidence

The landlord confirmed receipt of the tenant's original application and evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's original application and evidence.

The landlord confirmed that she did not serve any documentary evidence for this review hearing.

#### Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

##### *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout the conference, the landlord interrupted me and talked at the same time as me. I cautioned the landlord multiple times to stop interrupting me and to allow me to speak. The landlord continued with this behaviour throughout the hearing.

This hearing took longer because of the disruptive behaviour of the landlord. Despite the landlord's behaviour, I allowed her to attend the full hearing, in order to provide her with a full opportunity to respond to the tenant's application.

At the end of the hearing, the landlord made derogatory comments towards the tenant. She said that he was a refugee from Afghanistan and if he wanted to be a Canadian citizen, he should learn about the culture, which includes how to be clean. I notified the landlord that her comments were inappropriate and discriminatory and that she should refrain from further comments of that nature, towards the tenant.

I caution the landlord to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and she may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

#### Issue to be Decided

Is the tenant entitled to the return of double the amount of his security deposit?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The tenant testified that his tenancy began on August 15, 2017, as per the written tenancy agreement. The landlord claimed that it was September 1, 2017. The tenant said that he signed a written tenancy agreement with the landlord, while the landlord claimed that she only signed one with the tenant's roommate. The tenant provided a copy of the written tenancy agreement, signed by the tenant, his roommate and the landlord. The landlord said that she did not keep a copy of the tenancy agreement.

The tenant said that he paid a security deposit of \$262.50, which was half the amount of the \$525.00 indicated on the tenancy agreement for the security deposit. He claimed that his roommate paid the other half. The landlord stated that the tenant paid a security deposit of \$225.00 and she does not remember the amount of the deposit indicated on the tenancy agreement because she did not keep a copy of it.

Both parties agreed to the following facts. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. The tenant vacated the rental unit on April 30, 2018. The landlord continues to retain the tenant's security deposit. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to keep any part of the tenant's security deposit. The landlord filed her application to retain the deposit on June 17, 2019.

The tenant claimed that he provided a written forwarding address to the landlord on May 8, 2018, by registered mail to the address for service provided by the landlord on the tenancy agreement. He provided a copy of the envelope with the Canada Post tracking number, indicating that it was returned to him as sender. The landlord said that she did not receive the tenant's forwarding address and the tenant used the wrong address.

The tenant seeks the return of double the value of his security deposit of \$262.50, totalling \$525.00.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on April 30, 2018. I find that the tenant provided the landlord with a written forwarding address on May 8, 2018, by registered mail to the landlord's service address provided on the written tenancy agreement, which was signed by the landlord and the tenant. The tenant provided a copy of the mail envelope with the landlord's name and service address and he confirmed the Canada Post tracking number during the hearing. I find that the landlord was deemed served with the tenant's written forwarding address on May 13, 2018, five days after its registered mailing, as per sections 88 and 90 of the *Act*.

The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit to the tenant. The landlord filed an application for dispute resolution to claim against the deposit on June 17, 2019, more than 15 days after she was deemed to have received the tenant's written forwarding address on May 13, 2018. Further, the landlord's right to claim against the deposit for damages was extinguished for failure to complete the move-in and move-out condition inspection reports, as required by sections 23, 24, 35, and 36 of the *Act*.

I find that the tenant paid the landlord a security deposit of \$262.50, not the \$225.00 as claimed by the landlord. The tenancy agreement, which was signed by the landlord, indicates that a deposit of \$525.00 was due for both the tenant and his roommate. I accept the tenant's testimony that he paid \$262.50 to the landlord, which is half the \$525.00 amount due on the tenancy agreement, since his roommate paid the other half. The landlord could not recall what was written on the tenancy agreement because she did not keep a copy of it.

The landlord continues to hold the tenant's security deposit of \$262.50. Over the period of this tenancy, no interest is payable on the deposit. As per section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to double the value of his security deposit of \$262.50, totalling \$525.00.

### Review Decision

Section 82(3) of the *Act* states:

*Following the review, the director may confirm, vary or set aside the original decision or order.*

The Arbitrator at the original hearing awarded the tenant \$525.00 for double the security deposit amount.

Accordingly, I confirm the original decision and original monetary order, both dated December 17, 2018.

Therefore, this review hearing decision should be read together with the original decision.

### Further Reviews

I caution the landlord to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

*(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.*

### Conclusion

This review hearing decision should be read together with the original decision, dated December 17, 2018.

The original decision and original monetary order, both dated December 17, 2018, are confirmed.

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: July 22, 2019

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Residential Tenancy Branch