



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, FFT

### **Introduction:**

A hearing was convened on August 26, 2019 to consider an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution. The hearing on August 26, 2019 was adjourned for reasons outlined in my interim decision of August 26, 2019. The hearing was reconvened on October 24, 2019 and was concluded on that date.

The Tenant stated that on September 04, 2019 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were re-served to the Landlord, via registered mail, as per the instructions in my interim decision.

The Landlord stated that he did not receive the aforementioned documents until October 10, 2019 and that the envelope was postmarked October 09, 2019. He questioned whether the hearing should proceed, as he believes the documents were not mailed by September 15, 2019 as were the instructions in my interim decision.

Even if I accepted that the aforementioned documents were not mailed by September 15, 2019, I would accept the Tenant's evidence and proceed with the hearing, as the documents were received 14 days prior to the hearing. Residential Tenancy Branch Rules of Procedure stipulates that evidence must be served to a Respondent no less than 14 days prior to the start of the hearing and that the Application for Dispute Resolution must be served within three days of the Applicant receiving it from the Residential Tenancy Branch. Even if the Tenant did not strictly comply with the instructions in my interim decision and/or the Residential Tenancy Branch Rules of Procedure, I find that the Landlords have had ample time to consider the issues in dispute at these proceedings and that they are not unduly prejudiced by the hearing proceeding today. Given that the Landlords submitted evidence in response to the claim on August 08, 2019, I am satisfied that they have had a fair opportunity to respond to the Tenant's claims.

The Landlord stated that evidence the Landlords submitted to the Residential Tenancy Branch on August 08, 2019 were emailed to the Tenant, as per the instructions in my interim decision, although he does not recall the exact date they were served. The Tenant stated that he received these documents, by email, on September 11, 2019 and they were accepted as evidence for these proceedings.

In September of 2019 the Landlords resubmitted some evidence that was previously submitted to the Residential Tenancy Branch. As this evidence was already accepted as evidence for these proceedings these documents do not need to be addressed here.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

#### Preliminary Matter #1

The Landlord stated that the envelope he received from the Tenant on October 10, 2019 had a return address that is different than the service address provided by the Tenant in this Application for Dispute Resolution.

The Tenant stated that he is currently living at the return address provided on envelope; however, documents can still be mailed to him at the service address he provided in the Application for Dispute Resolution.

On the basis of the information provided by the Tenant, I find that the Landlords can continue to use the service the Tenant provided in the Application for Dispute Resolution until such time as the Tenant provides the with a change of address.

#### Preliminary Matter #2

The Landlord stated that the envelope he received from the Tenant on October 10, 2019 had a return address with a different surname for the Tenant.

The Tenant stated that he has two surnames.

As the Tenant has not applied to amend his name on the Application for Dispute Resolution, any Order granted as a result of these proceedings will use the name provided in the Application for Dispute Resolution.

Preliminary Matter #3

The Landlord and the Tenant agree that the Landlords have filed an Application for Dispute Resolution in regard to this tenancy, which is still on-going. In that application the Landlord is seeking compensation for damages to the rental unit.

The parties were advised that damages to the rental unit will not be considered at these proceedings, as that is the subject of a separate proceeding. They were advised that the issues in dispute at these proceedings will be limited to whether the Landlord handled the security deposit appropriately.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- they entered into an agreement that gave the Tenant the right to occupy the rental unit between November 16, 2018 and April 30, 2019;
- the Landlords did not have the right to occupy the rental unit during this term;
- the Tenant agreed to pay monthly rent of \$1,400.00;
- the Tenant paid a security deposit of \$700.00;
- a condition inspection report was not completed at the beginning of the tenancy;
- a condition inspection report was not completed at the end of the tenancy;
- the rental unit was vacated on April 01, 2019;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- and
- the Landlord did not return any portion of the security deposit.

The Tenant stated that he sent the Landlord a forwarding address, via email, on May 15, 2019. The Landlord acknowledged receiving the forwarding address on May 15, 2019.

The Landlord stated that the Landlords did not file an Application for Dispute Resolution claiming against the security deposit until September 24, 2019.

Analysis:

On the basis of the undisputed evidence I find that the parties entered into a tenancy agreement for the period between November 16, 2018 and April 30, 2019.

On the basis of the undisputed evidence I find that the Tenant paid a security deposit of \$700.00.

On the basis of the undisputed evidence I find that this tenancy ended on April 01, 2019, pursuant to section 44(1)(d) of the *Residential Tenancy Act (Act)*.

On the basis of the undisputed evidence, I find that the Landlords received a forwarding address for the Tenant, via text message, on May 15, 2019.

In determining that the Landlords received the Tenant's forwarding address, via 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.

Section 6 of the *Electronics Transactions Act* 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 the Landlord acknowledged receiving the text message in which the Tenant provided his forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security deposit and they did not file an Application for Dispute Resolution until more than 15 days after the tenancy ended and more than 15 days after they received the forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(1) of the *Act*, I find that the Landlords must pay the Tenant double the security deposit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$1,500.00, which includes double the security deposit of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlords do not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: October 25, 2019

---

Residential Tenancy Branch