



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for the return of their security deposit.

The tenant attended the teleconference hearing and was affirmed. The hearing process was explained to the tenant and an opportunity to ask questions was provided. During the hearing the tenant provided affirmed testimony and their documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (Notice of Hearing), application and documentary evidence were considered. The tenant testified that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on August 7, 2019. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address for the landlord provided by the landlord on the tenancy agreement submitted in evidence. In addition, the registered mail tracking number has been included on the cover page of this decision for ease of reference and has been identified as 1. According to the Canada Post online registered mail tracking website, the registered mail package was mailed on August 7, 2019 as stated by the tenant and was signed for and accepted by the landlord on August 8, 2019. As a result, I find the landlord was served as of August 8, 2019.

In addition, I note that the landlord submitted documentary evidence, which I find supports that they were served as indicated above. I have excluded the landlord's

documentary evidence in full as documentary evidence was not presented by the landlord for my consideration during the hearing. The hearing continued without the landlord present as I am satisfied that the landlord was served in accordance with the Act.

### Preliminary and Procedural Matter

The tenant confirmed the email addresses for both parties at the outset of the hearing and stated that they understood that the decision would be emailed to both parties.

### Issue to be Decided

- Is the tenant entitled to the return of their security deposit under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2018. According to the tenancy agreement, the monthly rent was \$850.00 per month and was due on the first day of each month. The tenant confirmed that they paid a security deposit of \$425.00 at the start of the tenancy.

The tenant referred to a letter dated May 9, 2019 submitted in evidence. In that letter the tenant provided the landlord with their written forwarding address and the tenant testified that the written forwarding address was sent to the landlord by registered mail on May 9, 2019. A second registered mail tracking number was provided and has been included on the cover page of this decision for ease of reference and has been identified as 2. According to the Canada Post online registered mail tracking website, the tenant mailed the registered mail on May 9, 2019 and the landlord signed for and accepted the package on May 13, 2019.

The tenant testified that the landlord continues to hold the tenant's full \$425.00 security deposit. The tenant also stated that they did not provide permission or written authorization for the landlord to retain any portion of the security deposit. The tenant did not indicate that they were waiving their right to double the return of the security deposit under the Act.

### Analysis

Based on the undisputed documentary evidence presented and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Having considered the written forwarding address dated May 9, 2019, the registered mail tracking numbers before me, and the undisputed testimony of the tenant, I accept that the landlord was served as of May 13, 2019 with the tenant's written forwarding address and that the landlord has failed to return any portion of the tenant's \$425.00 security deposit.

Sections 38(1) and 38(6) of the Act apply and state:

#### **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.**

**(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.**

[Emphasis added]

Based on the above, I find that the landlord was served with the tenant's written forwarding address as of the date they signed for and accepted the written forwarding address, which was May 13, 2019. I also accept the tenant's undisputed testimony that the landlord has failed to return any amount of the \$425.00 security deposit. I also find that the landlord has not filed an application to claim against the tenant's security deposit. Therefore, I find the landlord breached section 38(1) of the Act by failing to return the security deposit in full to the tenant within 15 days of May 13, 2019. Having considered that the landlord also failed to make a claim against the tenant's security deposit within 15 days of May 13, 2019, I find the tenant is entitled to the return of double the original security deposit of \$425.00 for a total of **\$850.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy. The tenant has met the burden of proof.

As the filing fee was waived, I do not need to consider the return of the filing fee.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of \$850.00, comprised of double the \$425.00 security deposit. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$850.00**.

The landlord is cautioned to comply with section 38 of the Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$850.00 as indicated above. I caution the landlord to comply with section 38 of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 14, 2019

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Residential Tenancy Branch