



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”) and to recover the cost of the filing fee for the claim.

This matter commenced on October 25, 2019, an interim decision was made, which should be read in conjunction with this decision.

Only the tenant and their advocate attended. As the landlords did not attend service was considered.

The tenant’s advocate stated that they complied with the substitutional service order in the interim decision by sending the documents to the deceased landlord’s uncle. The advocate stated they did not receive a response.

The tenant’s advocate stated they were able to locate the female landlord that was on the land title of the subject property at the time the tenancy agreement was entered into.

The advocate stated that the female landlord is also the named executrix for the deceased landlord. Filed in evidence are probate documents showing the executrix of the estate of the deceased landlord.

The tenant’s advocate stated that they were able to serve the female landlord and executrix by registered mail, which was signed by the female landlord on November 4,

2019. Filed in evidence is a copy of the Canada post tracking history, which shows it was successfully delivered.

I find the female landlord and the executrix of the male landlord's estate has been duly served.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

### Background and Evidence

The tenancy agreement was signed on October 25, 2017 and was to begin on November 15, 2017. Rent in the amount of \$1,300.00 was payable on the 15<sup>th</sup> of each month. A security deposit of \$650.00 was paid by the tenant. Filed in evidence is a copy of a tenancy agreement and copy of a receipt for payment of the security deposit.

The tenant testified that the male landlord was moving out of the rental unit and they were going to move in; however, they were told by the male tenant's uncle that the male landlord had passed away and they could not move into the rental unit. Filed in evidence are text messages, supporting the tenant's testimony.

The tenant testified that their forwarding address was sent on June 15, 2018, by their advocate, to both registered owners of the property that were on the land title document at the time the tenancy agreement was signed. Filed in evidence is a copy of the land title document showing both landlords were listed in the document at the time the tenancy agreement was signed.

The tenant testified that they sent it to the rental unit, as it was the only address, they had, and it was where the male landlord had been living at the time of his passing. Filed in evidence is a copy of the letter. Filed in evidence is a recent land title document showing the rental address is still the mailing address on record.

The tenant's advocate confirmed they sent the letter to the landlords by regular mail and it was not returned to the sender. The advocate stated that the tenant was placed at a disadvantage because the male landlord had passed away, and the tenant's uncle who

informed the tenant that they could not move in to the premise, stated the security deposit was not his concerned. The advocate stated that the tenant has the right for the return of the security deposit, and it appears the female landlord, who is also the executrix of the male landlord's estate is simply ignoring the situation.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(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.

(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.

I accept the testimony of the tenant that they provided their forwarding address to the landlords in a letter sent by the tenant's advocate on June 15, 2018. This is supported by the documentary evidence.

I find the landlord has breached section 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit or ignore their responsibilities under the Act, even when there is a very unfortunate circumstance, such as this.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit and the Deposit should have been returned at the time the landlords were unable to fill their obligations under the tenancy agreement or as soon as they had the tenant's forwarding address, which was deemed served five days after it was mailed on June 5, 2018.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlords pay the tenant the sum of \$1,400.00 comprised of double the Deposit (\$650.00) on the original amounts held and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the female landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The tenant's application for return of double the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: November 28, 2019

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Residential Tenancy Branch