



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFL

### 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 double their security deposit and pet damage deposit, plus the recovery of the cost of the filing fee.

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 dated September 23, 2019 (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 September 24, 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 September 24, 2019 as stated by the tenant and was signed unclaimed by the landlord and returned to the sender. Section 90 of the Act

states that documents sent by registered mail are deemed served 5 days after they are mailed. Therefore, I find the landlord was deemed served with the Notice of Hearing, application and documentary evidence on September 29, 2019, which is 5 days after the documents were sent by registered mail on September 24, 2019. Given the above, the hearing continued without the landlord present as I am satisfied that the landlord was served in accordance with the Act.

### Preliminary and Procedural Matters

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. In addition, the tenant confirmed that they understood that a monetary order would be served by email to the tenant only for service on the landlord.

### Issues to be Decided

- Is the tenant entitled to the return of double their security deposit and pet damage deposit under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2018 and reverted to a month to month tenancy after July 1, 2018. According to the tenancy agreement, the monthly rent was \$1,400.00 per month and was due on the first day of each month. The tenant confirmed that they paid a security deposit of \$700.00 and a pet damage deposit of \$250.00 for a total of \$950.00 in combined deposits (combined deposits) at the start of the tenancy. The tenant testified that the landlord has failed to return any portion of the combined deposits.

The tenant read into evidence the written forwarding address that the tenant stated was mailed by registered mail to the landlord on August 22, 2019. In that letter the tenant provided the landlord with their written forwarding address and the tenant testified that the landlord refused the registered mail package and that it was returned to sender. 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 August 22, 2019 as claimed, and the landlord refused the

registered mail package on September 12, 2019, and as a result, the registered mail package was returned to the sender.

The tenant testified that the landlord continues to hold the tenant's full combined deposits of \$950.00. The tenant also stated that they did not provide permission or written authorization for the landlord to retain any portion of their combined deposits. The tenant also testified that the landlord stated that they were going to make a claim against the tenant's deposits and never did so. A search of the case management system confirmed that the landlord has not made a claim against the tenant's combined deposits.

### 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 undisputed documentary evidence and undisputed testimony and given that the online registered mail website confirmed the testimony of the tenant, I find that the landlord was deemed served as of September 12, 2019, which is the date the landlord refused the written forwarding address registered mail package. I have used this date as it comes after the 5-day deemed service provision under the Act. I also note that the landlord may not refused service under the Act. Further, I find the landlord has failed to return any portion of the tenant's \$950.00 in combined deposits.

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]

Given the above, I find the landlord failed to either claim against the tenant's security deposit or return the full combined deposits of \$950.00 within 15 days of August 27, 2019. Therefore, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of double the combined deposits of \$950.00 for a total of

**\$1,900.00.** I note that the tenant's combined deposits have accrued \$0.00 in interest since the start of the tenancy. The tenant has met the burden of proof.

As the tenant paid a filing fee of \$100.00 and their application was successful, I grant the tenant **\$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of \$2,000.00, comprised of \$1,900.00 for double the combined deposits, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$2,000.00**.

**I caution** the landlord not to breach section 38(1) of Act in the future.

### Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$2,000.00 as indicated above. I caution the landlord to comply with section 38(1) 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: January 20, 2020

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Residential Tenancy Branch