



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenants had sent their proceeding package and supporting documents to each of the landlords. There was one landlord in attendance at the hearing and he confirmed that he was representing both named landlords.

The hearing process was explained to the parties and the parties were permitted the opportunity to ask questions about the process.

### Issue(s) to be Decided

Have the tenants established an entitlement to doubling of the security deposit?

### Background and Evidence

It was undisputed that the tenancy started on September 1, 2017 and the tenants paid a security deposit of \$689.50. It was also undisputed that the tenancy ended on October 31, 2019.

The tenants received a refund of the security deposit, in the full amount, by way of a cheque dated November 15, 2019 that was in an envelope post marked December 10, 2019. The tenant submitted that he received the cheque on or about December 16,

2019. The tenants deposited the refund cheque but seek doubling of the deposit, plus recovery of the filing fee.

The tenant submitted that they are entitled to doubling of the security deposit because the landlord failed to return the security deposit within 15 days of the tenancy ending and receiving the forwarding address. It was undisputed that the tenants vacated the rental unit and returned possession of the rental unit to the landlord on October 30, 2019. As for providing the landlord with a forwarding address, the tenant submitted the following:

- The forwarding address may have been on the tenant's notice to end tenancy although the tenant was not entirely certain of this since he wrote the notice to end tenancy very quickly and does not have a copy of it.
- The tenants left the keys to the rental unit and a note with their forwarding address for the landlord on October 30, 2019 although the tenants do not have proof they left a note with the forwarding address.
- On November 1, 2019 the tenant sent a text message to the landlord asking if the landlord would prefer emailing the security deposit or mailing it to them; however, there was no response from the landlord.
- The tenant sent another text message to the landlord on November 23, 2019 providing their email address and their forwarding address to which the landlord responded he would be mailing a cheque the next week.

The tenant submitted that in reviewing other decisions on the Residential Tenancy Branch website, there are Arbitrators who have found a forwarding address provided by text message is an acceptable way to provide a forwarding address.

The landlord responded as follows:

- The landlord had not come to the hearing prepared to respond to the content of the tenant's notice to end tenancy.
- The tenants left the rental unit keys for him on October 30, 2019 but there was no note with their forwarding address left for him.
- The landlord received the text message from the tenant on November 23, 2019 and he informed the tenant that he would have a refund cheque sent out the following week and the tenant was satisfied with that.
- The landlord's administrative office was responsible for mailing the cheque to the tenant.

### Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

It is undisputed that the tenancy came to an end at the end of October 2019 and the tenants did not authorize any deductions from the security deposit and the tenants were entitled to a full refund of the security deposit. It is also undisputed that the landlord did send a full refund to the tenants. The issue is whether the landlords met their 15-day time limit for repaying the security deposit.

The 15-day time limit starts counting when the latter of the following events occurs: the date the tenancy ended and the date the landlord receives the tenant's forwarding address in writing. Where a tenant makes a claim for return of the security deposit, in its single or double amount, the tenant bears the burden to prove these events occurred and when they occurred.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

It was undisputed that the tenants vacated the rental unit and returned possession of the rental unit to the landlord on October 30, 2019. Pursuant to section 44(1)(d) of the Act, I find the tenancy ended on October 30, 2019.

As for the date the forwarding address was provided to the landlord, in writing, I was provided three possible occurrences by the tenant, which I analyze below.

The tenant submitted that the forwarding address may have been on the tenant's notice to end tenancy. The tenant had not made this submission in completing the details of dispute on the Application for Dispute Resolution, the tenant had not provided a copy of the notice to end tenancy, and the tenant's own testimony was that he was not certain if the notice actually contained his forwarding address. In these circumstances, I find the

tenants did not prove that a forwarding address was included in the notice to end tenancy served to the landlord.

The tenant submitted that the forwarding address was left on a piece of paper with the keys that were left for the landlord on October 30, 2019. The landlord acknowledged that the keys were left for him but denied that a note was left with the keys. When I turn to the tenant's Application for Dispute Resolution the tenants do not specifically say they left the forwarding address on a note they left for the landlord on October 30, 2019. The text messages exchanged on October 30, 2019 describe leaving the keys but there is no mention of a note being left with the keys. In the two subsequent text messages sent by the tenant, on November 1, 2019 and November 23, 2019, the tenant does not refer to their forwarding address being left on a note left for the landlord on October 30, 2019. In these circumstances, I find the tenants have not sufficiently proven that the tenants provided their forwarding address in a note left for the landlord on October 30, 2019.

It is undisputed that the tenant provided the landlord with a forwarding address in a text message sent on November 23, 2019. The issue is whether sending an address via text message satisfies the tenant's obligation to provide the landlord with a forwarding address in writing before seeking return of the security deposit, and/or doubling of the deposit, by way of an Application for Dispute Resolution.

Under section 38(1) a landlord is entitled to receive a forwarding address in writing before the landlord is obligated to take action with respect to disposition of the security deposit. Section 88 of the Act provides for all of the acceptable methods of giving a document to the other party. Section 88, as it is currently written, does not recognize or permit giving a document by way of text message or email. I further point out that section 90 of the Act, which provides for the date a document is deemed to be received, does not recognize documents sent via email or text messaging. Accordingly, I find that sending a document via email or text message is not served in a manner that complies with the Act.

The tenant argued that other Arbitrators have accepted forwarding addresses given by way of email or text message is sufficient; however, I am not bound by the decisions other arbitrators make. Section 64 of the Act deals with dispute resolution proceeding, in general, including the following provision:

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

I am of the view that where a tenant seeks doubling of a deposit based on a provision of the Act, the tenant must be prepared to demonstrate the tenant met his obligations under the Act, which includes providing the landlord with a forwarding address in writing and to give it to the landlord in a manner that complies with the Act.

Since the tenants have not demonstrated that they served the landlord with their forwarding address in writing in a manner that complies with the Act before making this Application for Dispute Resolution, I deny their request for doubling of the deposit. Considering the tenants have already received a full refund of the single amount of the security deposit, I make no award for return of the single amount.

Given the tenant's lack of success in this Application for Dispute Resolution I make no award for recovery of the filing fee.

For all of the reasons provided above, the tenant's application is dismissed in its entirety.

### Conclusion

The tenant's application is dismissed.

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: February 06, 2020

---

Residential Tenancy Branch