



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on October 4, 2019, in which the Tenant sought return of his security deposit and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on February 3, 2020. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:47 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on October 7, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of October 12, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Tenant entitled to return of his security deposit?
2. Should the Tenant recover the filing fee paid?

#### Background and Evidence

The Tenant testified that this tenancy began September 1, 2018. Monthly rent was \$1,350.00 and the Tenant paid a security deposit of \$700.00.

The tenancy ended on August 31, 2019. The Tenant testified that he verbally informed the Landlord of his forwarding address and telephone number at the time the tenancy ended. He then followed up with a letter to the Landlord on September 6, 2019, which he sent by registered mail (a copy of the tracking number for that package is also included on the unpublished cover page of this my Decision).

The Tenant confirmed that he lived in the rental unit with his mother and father, and occasionally his brother. He testified that neither he, nor any of his family, communicated to the Landlord that they were agreeable to the Landlord retaining any portion of the deposit.

#### Analysis

## Analysis

The Tenant applies for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

### **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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished

under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that he did not agree to the Landlord retaining any portion of the security deposit.

I find that the Landlord received the Tenant forwarding address in writing on September 11, 2019 (five days after the registered mail package was sent by the Tenant).

The Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. I find the Landlord did not have any such authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$1,500.00**, comprised of double the security deposit (2 x \$700.00) and the \$100.00 fee for filing this Application.

### Conclusion

The Landlord failed to apply for Dispute Resolution or return the Tenant's security deposit within five days of receipt of the Tenant's forwarding address. Consequently, and pursuant to section 38(6) of the *Act*, the Tenant is entitled to return of double their security deposit. As the Tenant has been successful in his Application, he is also entitled to recover the \$100.00 filing fee for a total award of \$1,500.00.

In furtherance of this my Decision the Tenants is given a formal Monetary Order in the amount of **\$1.500.00**. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: February 03, 2020

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Residential Tenancy Branch