



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NOOR WINDOW AND BLINDS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 6, 2019, wherein the Tenant sought return of double the security deposit paid.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on March 20, 2020. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present their 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 1:40 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 she served the Landlord with the Notice of Hearing and the Application on November 8, 2019 by registered mail. She confirmed that she sent the package to the Address for Service provided for on the tenancy agreement, addressed to the owner of the company which in turn owned the rental unit. She stated that the Landlord's agent, S.S., told her repeatedly during the tenancy that all communication relating to the tenancy was to be directed to the company at that address. She also stated that there were signs on the property indicating the ownership of the property.

*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 November 13, 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.

### Preliminary Matters

The Tenant confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issue to be Decided

Is the Tenant entitled to return of double her security deposit paid?

### Background and Evidence

The Tenant provided a copy of her residential tenancy agreement confirming that her tenancy began October 1, 2018. Monthly rent was payable in the amount of \$900.00 and the Tenant paid a security deposit of \$450.00.

The tenancy ended on June 14, 2019. The Tenant testified that she provided the Landlord's Agent, S.S., with her forwarding address on the date she moved out. She also testified that her friend, L.W. was present when she personally handed her forwarding address to S.S.

The Landlord did not return the deposit to the Tenant nor did they apply for dispute resolution.

### Analysis

The Tenant applies for return of her 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 Tenants' evidence that she did not agree to the Landlord retaining any portion of her security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on June 14, 2019, the day she moved from the rental unit.

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*.

Having made the above findings, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$900.00**, comprised of double the security deposit (2 x \$450.00).

### Conclusion

The Tenant's application for return of double her security deposit is granted. In furtherance of this the Tenant is given a formal Monetary Order in the amount of **\$900.00**. 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: March 20, 2020

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Residential Tenancy Branch