



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDS-DR, FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 27, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on April 1, 2020, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on January 23, 2019 and the tenant on January 22, 2019, indicating a monthly rent of \$5,000.00 and a security deposit of \$5,000.00 for a tenancy commencing on February 20, 2019;

- A copy of a personal cheque from the tenant dated January 22, 2019 in the amount of \$10,000.00 for rent and security deposit, paid to the landlord;
- A copy of a letter from the tenant's lawyer to the landlord dated October 25, 2019, providing the forwarding address and requesting the return of the deposit;
- A copy of an affidavit of service which indicates that the forwarding address was personally served to the landlord at 6:29 pm on October 30, 2020;
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of deposit paid by the tenant and indicating that the tenant vacated the rental unit on June 7, 2020.

### Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the Forwarding Address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposits or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$5,000.00 as per the tenancy agreement and the persona cheque.

I note that the Monetary Order Worksheet indicates that the tenant vacated the rental unit on June 7, 2020, which is a date that has not yet occurred. I find it reasonable to conclude that the tenant in fact vacated the rental property on June 7, 2019.

In accordance with section 88 of the *Act*, I find that the landlord was duly served with the forwarding address on October 30, 2019.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- The tenant has not provided consent for the landlord to keep all or part of the deposits;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the evidence before me that the landlord has failed to return the deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain the

deposit by November 14, 2020, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$10,000.00, the amount claimed by the tenant for double the security deposit, as of the date of this application, March 23, 2020.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$10,100.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: April 02, 2020

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Residential Tenancy Branch