



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFT, MNSD**

### **Introduction**

This hearing dealt with the **tenants'** application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for \$2,600 representing two times the amount of the security deposit, pursuant to sections 38 and 62;
- a monetary order for \$23 representing the cost of mailing correspondence to the landlord pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The **landlord** did not attend this hearing, although I left the teleconference hearing connection open until **1:43 pm** in order to enable the **landlord** to call into this teleconference hearing scheduled for **1:30 pm**. Tenant AS attended the hearing on behalf of both tenants and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 AS and I were the only ones who had called into this teleconference.

AS testified she served that the **landlord** with the notice of dispute resolution form and supporting evidence package via registered mail on December 7, 2019. She testified she sent it to the address for service listed on the tenancy agreement (which is the same address as the rental unit). AS provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision.

I find that the tenant is entitled to rely on the address for service listed by the landlord on the tenancy agreement as the address at which the landlord indicates it will accept service. I find that by indicating an address for service on the tenancy agreement, the landlord indicates that it is at this address where they carry on business as a landlord.

Pursuant to section 89(1)(c) of the Act, a tenant may serve a landlord with an application for dispute resolution by send it by registered mail to the address at which the landlord carries on business as a landlord.

As such, I find that the landlord is deemed served with this package on December 12, 2019, five days after AS mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) a monetary order for \$2623;
- 2) recover their filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting June 13, 2019 and ending September 27, 2019. Monthly rent was \$2600. The tenant paid the landlord a security deposit of \$1300 at the start of the tenancy, which the landlord retained until April 30, 2020, when she e-transferred it to tenant AS.

AS testified that the tenancy ended on September 27, 2019. She testified that the tenants sent their forwarding address to the landlord at the address for service listed on the tenancy agreement by registered mail (which, as stated above, is the same address as the rental unit). She submitted a copy of the letter supplying the forwarding address into evidence. She also provided the Canada Post tracking number of this mailing (reproduced on the cover of this decision).

She testified that the landlord did not return the security deposit within 15 days of receiving sending the forwarding address. As stated above, she received the security deposit from the landlord on April 30, 2020.

AS submitted that, despite the security deposit being returned on April 30, 2020, she is entitled to a monetary order of two times the amount of the security deposit (less the amount already returned) pursuant to section 38 of the Act.

AS also testified that she incurred \$23 in registered mailing costs associated with sending the forwarding address and the application materials to the landlord. She claims compensation for this amount as well.

### **Analysis**

Section 38(1) of the Act states:

**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.

Based on the testimony of AS, I find that the tenancy ended on September 27, 2019 and that the tenants provided their forwarding address in writing to the landlord on November 6, 2019, five days after it was sent by registered mail, pursuant to sections 88 and 90 of the Act. For the reasons stated above, I find that the tenants complied with the Act by mailing the forwarding address to the address for service listed on the tenancy agreement.

I find that the landlord has not returned the security deposit to the tenants within 15 days of receiving their forwarding address. I find that she did not return the security deposit to the tenants until April 30, 2020, 176 days after having been deemed served with the tenants' forwarding address.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

It is not enough that the landlord return the security deposit at some point after the tenant has ended and the forwarding address has been provided. The landlord must do this with 15 days of the later of these events occurring.

I find that the landlord failed to do this. Accordingly, I find that she has failed to comply with their obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that they pay the tenants double the amount of the security deposit (\$2,600). The amount paid to the tenants on April 30, 2020 must be deducted this amount,

The final portion of the application concerns cost of sending documents by registered mail. I have no authority under the Act to award compensation for such costs. Disbursements such as photocopying costs, postage costs, and travel costs are not recoverable under the Act. As such, I dismiss this portion of the tenants' application.

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover their filing fee from the landlord.

### **Conclusion**

Pursuant to sections 62, 65, and 72 of the Act, I order that the landlord pay the tenants \$1,400, representing the following:

Double security deposit	\$2,600
Credit for amount returned	-\$1,300
Filing fee	\$100
<b>Total</b>	<b>\$1,400</b>

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 30, 2020

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Residential Tenancy Branch