



# 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 tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The landlord attended the hearing and the tenant attended the hearing assisted by an advocate, CM. As both parties were present, service of documents was confirmed. The landlord acknowledges being served with the tenant's Notice of Dispute Resolution Proceedings, however did not receive the tenant's evidence. The tenant's advocate testified the evidence was served by registered mail on May 1, 2020 and provided a tracking number, listed on the cover page of this decision. The tenant's evidence is deemed served on the landlord on May 6, 2020, five days after mailing in accordance with rules 89 and 90 of the *Act*.

The landlord was unable to provide evidence to satisfy me she served the tenant with her evidence related to this dispute and I advised the parties the landlord's documentary evidence would not be considered in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure. The landlord's evidence would consist solely of her oral testimony.

### **Issue(s) to be Decided**

Should the tenant's security deposit be returned to her, doubled?

Should the tenant's filing fee be recovered?

### Background and Evidence

The parties agree on the following facts. The rental unit is a detached house and the landlord lives in the coach house. The parties each had their own kitchen and bathroom facilities. The tenancy began in mid-July 2019, either July 15 or 16. Rent was set at \$1,500.00 per month payable on the first day of the month. A security deposit of \$750.00 was collected by the landlord which she continues to hold.

The tenant testified that she was not invited to do a condition inspection report with the landlord at the commencement of the tenancy, nor was she invited to do one at the end. The tenancy ended when the landlord served the tenant with a notice to end tenancy which the tenant agreed to and vacated the rental unit on November 30, 2019. On November 19, 2019, by registered mail, the tenant sent the landlord a letter agreeing to move out in accordance with the notice to end tenancy. The letter, provided as evidence for this hearing, also indicated the tenant's forwarding address. The tracking number for the mailing of the forwarding address is also provided on the cover page of this decision. The tenant testified the letter was refused by the landlord and that the landlord habitually refuses mail sent to her by the tenant. The tenant sent another copy via regular mail to the landlord however the date of this mailing was not provided.

The landlord provided the following testimony. No condition inspection report was done with the tenant at the commencement of the tenancy because the tenant moved in early, on July 15<sup>th</sup> instead of the agreed upon date of August 1<sup>st</sup>. The tenant agreed to move into the rental unit that was being worked upon by plumbers and inspectors and the tenant was OK with that because of her background in construction. No condition inspection report was done with the tenant at the end of the tenancy because industrial heaters brought into the unit were being removed on November 30<sup>th</sup> by the tenant.

The landlord testified there was an incident involving the police on November 19<sup>th</sup>, where the landlord was arrested for criminal harassment and she was 'consumed' with police issues. She couldn't even enter the property. The landlord submits that she was unable to accept correspondences with the tenant due to a police issued undertaking to not communicate with the tenant. The landlord also denies receiving the notice from Canada Post advising her that there is registered mail awaiting her. In response, the tenant's advocate stated he spoke to the police officer who issued the undertaking who assured him that communication by registered mail was allowed.

The landlord testified she had filed an Application for Dispute Resolution against the tenant and successfully served the tenant with the documents required for that hearing to the tenant's forwarding address. A copy of the decision in that hearing was provided

as evidence by the tenant, and the file number is recorded on the cover page of this decision. The decision of the previous arbitrator states:

*The landlord's application was filed prior to the tenancy ending. I have no evidence before me, if the landlord received the tenant's forwarding address in accordance with section 38 of the Act.*

*Therefore, I decline to issue an order for the return of the security deposit.*

*The tenant is a liberty to make an application for the return of their security deposit, if the landlord has not complied with section 38 of the Act, after the landlord has received the tenant's forwarding address.*

The landlord acknowledges she must have had the tenant's forwarding address sometime in September in order to serve her with that Application for Dispute Resolution. The landlord testified that following the arbitrator's decision, she did not file an Application for Dispute Resolution for compensation for damages done to the unit after the tenancy ended or reapply to use the security deposit to offset any damage award she may be awarded.

### Analysis

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the rental unit with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Secondly, section 38(1) and (6) of the *Act* addresses the return of security deposits.

(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.

...

(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.

In accordance with sections 88 and 90 of the *Act*, the tenant's forwarding address is deemed served on November 24, 2019, five days after it was mailed out on November 19, 2019. The landlord did not file for dispute resolution within 15 days of receiving the tenant's forwarding address, or by December 9, 2019.

The landlord's right to claim against the security deposit was extinguished for her failure to do a condition inspection report with the tenant at the commencement of the tenancy, contrary to section 24. Second, the landlord did not return the security deposit or file a claim against it within 15 days of receiving the tenant's forwarding address contrary to section 38(1)(b).

The language of section 38(6)(b) is mandatory. The landlord must pay the tenant \$1,500.00, representing a doubled security deposit.

As the tenant's application was successful, the tenant is also entitled to recover the \$100.00 filing fee for the cost of this application.

#### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,600.00.

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: May 22, 2020

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Residential Tenancy Branch