



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of double the security deposit pursuant to s. 38 of the *Residential Tenancy Act* and for the recovery of the filing fee pursuant to s. 72.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by an agent. The tenant represented herself. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Upon consideration of the documentary evidence, a preliminary issue was raised and repeated at the hearing. The landlord was of the position that I did not have jurisdiction to resolve this dispute.

### **Issues to be decided**

Does the *Residential Tenancy Act* apply to the parties and do I have jurisdiction to resolve this dispute? If jurisdiction is established, is the tenant entitled to the return of double the security deposit and to the recovery of the filing fee?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on May 15, 2018 for a fixed term of one year. The tenant agreed that the tenancy continued in a second fixed term with an end date of May 15, 2020. The monthly rent monthly rent was \$1,550.00 due on the first of each month. At the start of the tenancy, the tenant paid a security deposit of \$775.00.

The parties agreed that on August 30, 2019 the tenant gave the landlord notice to end the tenancy effective September 30, 2019 and moved out that day. The tenant stated that on the last day of tenancy, a move out inspection was conducted in her presence by the cleaning lady but a report was not created.

The tenant provided proof of having sent her forwarding address in writing to the landlord by registered mail on October 01, 2019 and filed a copy of the tracking history of the package, which indicated that the landlord received it on October 02, 2019.

The landlord made an application for damages against the security deposit, 21 days later, on October 23, 2019 and this matter was scheduled to be heard on November 29, 2019. The tenant attended the hearing, but landlord did not. In a decision dated November 29, 2019, the Arbitrator dismissed the landlord's application without leave to reapply. On December 03, 2019, the tenant made this application for the return of double the security deposit.

The tenant pointed out that the landlord did not return the security deposit and had made application outside of the legislated time frame of 15 days from the date he received the forwarding address of the tenant.

On December 11, 2019 the landlord applied for a review consideration and this application was denied in a decision dated December 20, 2019. On February 18, 2020, the landlord made application in the Supreme Court, for a judicial review of the decision dated November 29, 2019.

### **Analysis**

Section 27 of *Residential Tenancy Policy Guideline* addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction.

Based on the sworn testimony of both parties and the documentary evidence filed by both parties, I find that the landlord made an application for a monetary order for damages and to retain the security deposit in partial satisfaction of his claim. His claim to retain the security deposit is included in the matter that is currently in litigation before the Supreme Court.

Based upon the above, I find that this claim is a dispute linked substantially to a matter that is before the Supreme Court, and that jurisdiction lies with that court. Accordingly, pursuant to section 58(2)(c) of the *Act*, the Residential Tenancy Branch director, and I as the director's delegate, have no authority to determine this dispute.

One possible outcome of the matter in Supreme Court is that the Judge will set aside the decision dated November 29, 2019 and will order that a hearing to be convened to address the landlord's original application dated October 23, 2019. In that case the tenant's application for the return of double the security deposit will also be addressed, without the tenant having to make application.

In the event that the Supreme Court Judge upholds the decision dated November 29, 2019 and the landlord is not granted a hearing, the tenant is at liberty to reapply for the return of double the deposit, as I am dismissing this application with leave to reapply.

At the time the tenant made this application on December 03, 2019, she had no way of knowing that the landlord intended to apply for a Judicial review on February 18, 2020. While I am dismissing the tenant's application with leave to reapply, I find that the tenant is entitled to the recovery of the filing fee.

Accordingly, I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I find that this dispute is substantially linked to a matter that is before the Supreme Court and therefore I dismiss the tenant's application with leave to reapply.

I grant the tenant a monetary order in the amount of \$100.00.

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 07, 2020