



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 8, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

The Tenants both attended the hearing. The Landlord attended the hearing with his translator. The Tenants stated they did not have a forwarding address or an address for service for the Landlord, so they sent all their documents to the rental unit they used to rent. The Landlord confirmed that he received the Tenants' Notice of Dispute Resolution Proceeding on January 20, 2020, which was sent by registered mail to the address of the rental unit, but stated that there was no evidence included with this package. I am satisfied the Landlord has been sufficiently served with the Tenants' Notice of Dispute Resolution.

The Tenants stated that they sent their evidence by registered mail on May 20, 2020, and they provided a tracking number to corroborate this service. The Tenants stated that they printed off all the uploaded pdf's and photos and put them in the envelope, as well as a printed link to the uploaded video files. The Tenants stated that the video files are just for proof of service of their documents.

The Landlord received this package, but stated it did not contain any photos, only a paper document with typed youtube links where the Tenants' proof of service videos were stored. After reviewing the proof of service videos provided by the Tenants, it is clear that the package contained the printed photos, and screen shots as stated by the

Tenants. I find the Tenants have provided a more reliable and compelling version of events, supported with video, to show that they included their evidence all in that one package, sent May 20, 2020. Although the Landlord denies that the photos were contained in the package, he acknowledged getting the package on May 21, 2020. I find it more likely than not that the package contained the materials, as explained by the Tenants, and as shown in the video.

I find the Landlord has been sufficiently served with the printed materials in the Tenants evidence package. As their video files only related to showing me that they served their physical/printed evidence, it is not necessary to consider whether or not these videos were sufficiently served on the Landlord, as they were not material or necessary to my determination of the issues applied for. Ultimately, I find the Tenants have sufficiently served the Landlord with their Notice of Dispute Resolution, and printed evidence.

The Landlord stated he served each of the Tenants with his evidence by registered mail. He provided tracking information to show that he sent these packages to the Tenants' forwarding address (the address for service on their Notice of Dispute Resolution Proceeding). The Tenants acknowledged getting this evidence and did not take issue with the service of this package.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

#### Background and Evidence

The parties confirmed that the Tenants paid a security deposit of \$1,900.00 and that the Landlord still holds this amount. The parties also confirmed that the Tenants left the rental on August 31, 2019.

The Tenants testified that the Landlord never conducted a move-out inspection, despite the Tenants asking for one, because he said he was too busy. The Landlord did not refute this claim.

The Tenants stated that they sent the Landlord their forwarding address in writing, by registered mail, on October 1, 2019. The Tenants provided proof of mailing to show that it was delivered and signed for by an individual named "G W", on October 2, 2019, which is the Landlord's initials. The Landlord denies getting this package and stated he never got the Tenants forwarding address.

The Tenants provided the Tenancy Agreement into evidence, which shows that the Landlord did not provide an address for service to the Tenants. However, the Tenants provided proof to show that the packages they sent, addressed to the Landlord at the address of this rental unit, were signed for by him.

The Landlord provided proof of mailing to show he served the Tenants with his evidence, at the start of the hearing, and on the proof of mailing, the Landlord listed his address as the address of the rental unit, despite saying he lives elsewhere.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on August 31, 2019, which I find reflects the end of the tenancy. I note the Landlord denies getting the Tenants' forwarding address in writing. However, the Tenants were able to provide registered mail tracking information to show that their forwarding address was signed for by someone with the Landlord's initials, at the address of the rental unit (which is also the address the Landlord listed on the registered mail ticket when he mailed information to the Tenants). I note this package was sent by the Tenants on October 1, 2019, and was signed for October 2, 2019. I find it more likely than not that the Landlord received this package on the day it was signed for, October 2, 2019.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until October 17, 2019) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$1,900.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenants a monetary order for \$3,900.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

### Conclusion

I grant the Tenants a monetary order in the amount of **\$3,900.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: June 9, 2020

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Residential Tenancy Branch