



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for the return of the security deposit, and to recover the \$100.00 cost of her Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution, Notice of Hearing, and any documentary evidence submitted to the RTB. The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on February 4, 2020. The Tenant provided a Canada Post tracking number as evidence of service and she confirmed that everything she had uploaded to the RTB was included in this package. I find that the Landlord was deemed served with the Notice of Hearing

documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Tenant served the Notice of Hearing on the Landlord on February 9, 2020.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and confirmed them at the outset of the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing.

### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Tenant said that the Landlord did not provide a tenancy agreement for the tenancy. The Tenant advised that the periodic tenancy began on September 1, 2019, with a monthly rent of \$1,000.00, due on the first day of each month. The Tenant said she also paid the Landlord \$50.00 per month for utilities. The Tenant said that she paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit.

The Tenant said that she gave the Landlord one month notice of the end of the end of the tenancy in October 2019, for an effective vacancy date of November 30, 2019. She said given the Landlord's arrangement at the beginning of the tenancy, the Tenant paid the Landlord \$560.00 for the first half of the month, plus extra for utilities, and the

Landlord took the second \$500.00 rent owing out of the \$1,000.00 security deposit. This left the Landlord holding \$500.00 of the Tenant's security deposit.

The Tenant said the Landlord e-transferred her \$1.00 on January 2, 2020, to confirm the Tenant's email address in order to return the rest of the security deposit this way. However, the Tenant said that she never heard from the Landlord again, despite the Tenant continuing to call and text the Landlord about the debt owing.

The Tenant has applied to the RTB for an order for the return of the remaining security deposit of \$499.00 and recovery of the \$100.00 Application filing fee.

### Analysis

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

I find that the Tenant has provided evidence that the Parties communicated through email and text messaging.

I find that the Tenant provided her written forwarding address to the Landlord via email on December 14, 2019, and that the tenancy ended on November 30, 2019. Section 38(1) of the Act states the following about the connection between these two dates and the security 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.

I find that the Landlord was required to return the remaining \$500.00 security deposit to the Tenant within fifteen days after December 14, 2019, namely by December 29, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1).

The evidence before me is that the Landlord accepted half of the Tenant's security deposit as half a month's rent in November 2019, and paid the Tenant \$1.00 of the remaining \$500.00 security deposit owing to the Tenant. However, the Landlord provided no evidence that she returned any amount of the remaining security deposit by December 29, 2019, or applied to the RTB to claim against the deposit. I, therefore, find that the Landlord failed to comply with her obligations under section 38(1) of the Act.

Since the Landlord failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Tenant is eligible to claim double the remaining security deposit from the Landlord. Section 38(6) states:

**38 (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.

[emphasis added]

The Tenant declined the opportunity to claim double what she is owed by the Landlord, despite the Landlord's breach of section 38(1) of the Act. She said: "I just want to be paid what I am owed."

Based on the evidence before me overall, I find that the Tenant is entitled to a monetary award of **\$499.00** from the Landlord pursuant to sections 67 of the Act.

### **LANDLORD'S CAUTION**

The Landlord is cautioned to comply with the *Residential Tenancy Act*. In addition to a breach of section 38(1) of the Act, there is evidence before me that the Landlord violated section 19 of the Act, which addresses deposit limits that can be collected from tenants in a residential tenancy:

### **Limits on amount of deposits**

**19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of  $1/2$  of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[emphasis added]

In addition, sections 12 and 13 address the requirement to create written tenancy agreements, which agreements must be provided to tenants:

### **Tenancy agreements include the standard terms**

**12** The standard terms are terms of every tenancy agreement

(a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and

(b) whether or not the tenancy agreement is in writing.

### **Requirements for tenancy agreements**

**13** (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

...

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[emphasis added]

The Landlord is cautioned that the Residential Tenancy Branch now has a **Compliance and Enforcement Unit** which conducts investigations of repeated or serious and deliberate non-compliance with the tenancy laws or failure to follow orders of the Director, such as that provided to this Tenant. The unit has the authority to issue warnings to ensure compliance and if necessary, to **administer penalties of up to \$5,000.00 per day.**

Given that the Tenant was successful in her Application, I also award her with recovery of the \$100.00 Application filing fee. The Tenant is granted a monetary order from the Landlord in the amount of **\$599.00.**

Conclusion

The Tenant's claim for recovery of the remaining security deposit owed her by the Landlord is successful in the amount of \$499.00. The Tenant is also awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$599.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 25, 2020

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Residential Tenancy Branch