



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, 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 double the security deposit in the amount of \$3,400.00, and to recover the \$100.00 cost of their Application filing fee.

The Tenant and his wife, A.F., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they 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 Parties agreed that the fixed term tenancy began on March 1, 2019, and was to run to February 29, 2020, and then operate on a month-to-month basis; however, the Parties agreed that the tenancy ended on October 19, 2019, after the Tenants gave the Landlord notice in August 2019 of their intent to move out in October 2019. They agreed that the Tenant paid the Landlord a monthly rent of \$3,300.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,650.00, and no pet damage deposit. They agreed that the Landlord did a “walk-through” inspection of the rental unit with A.F., prior to the tenancy starting. The Landlord confirmed that she had not marked down the items reviewed on a condition inspection report, nor given a condition inspection report (form RTB-27).

The Parties provided testimony about claims the Landlord had made in her documentary evidence; however, I advised the Parties that since the Landlord had not applied for RTB dispute resolution, I was not authorized to consider her claims against the Tenants.

The Tenant said that he requested the Landlord return the security deposit in an email dated November 8, 2019. In this email, the Tenant said: “An important factor for me in resolving this situation is your planned timing for the refund.” At the bottom of this email, beneath the Tenant’s name is his forwarding address.

The Landlord said that she never noticed this address. In the hearing she said: “You could have said here, [N.], here’s our address. In all fairness, that’s in tiny little writing at the end of your email.” The Landlord said that she did not have the Tenant’s forwarding address, or she would have initiated a dispute resolution proceeding, herself. She said she asked for the forwarding address on September 2, 2019, but at that time, the Tenants did not know to where they would be moving. The Landlord acknowledged that she did not ask for the address again. The Tenant said that he provided this address with every email he wrote the Landlord.

### 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 provided his forwarding address to the Landlord in an email dated November 8, 2020. While I agree that the Tenant could have presented the forwarding address more clearly and centrally, at least initially in his emails to the Landlord, I find that the address was provided to her.

The Landlord said that if she had the address, she would have initiated a dispute resolution proceeding against the Tenant. However, the Landlord only asked for the address once, and I find that it was provided in every email the Tenant wrote to the Landlord. Further, the Application documents that the Tenant served on the Landlord on March 11, 2020 contained the Tenant's address. As such, the Landlord could have initiated a dispute resolution proceeding then, but she did not do so. I find it more likely than not that a reasonable person reading the Tenant's emails would have noticed the mailing address at the bottom of every email. I find that the Landlord's reasons for not knowing or acting on the mailing address provided by the Tenants are not reasonable in the circumstances before me.

I find that the tenancy ended on October 19, 2019. Section 38(1) of the Act states the following about the relevance of these dates:

**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.

The Landlord was required to return the \$1,650.00 security deposit within fifteen days

after November 8, 2020, namely by November 23, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that she returned any amount or applied to the RTB to claim against the deposit. Therefore, I find the Landlord failed to comply with her obligations under section 38(1).

Since the Landlord has failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit.

Section 38(6) states:

(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]

I, therefore, award the Tenant with recovery of double the security deposit from the Landlord in the amount of \$3,300.00, pursuant to section 67 of the Act. Given his success in this Application, I also award the Tenant with recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act. I grant the Tenant a Monetary Order of **\$3,400.00**, pursuant to section 67 of the Act.

### Conclusion

The Tenant's claim for recovery of double the security deposit is successful in the amount of \$3,300.00. The Tenant is 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 **\$3,400.00**.

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: July 07, 2020

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Residential Tenancy Branch