



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- The return of double their security deposit amount, and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and their witness, both of whom provided affirmed testimony. Neither the Landlord nor an agent acting on their behalf attended. The Tenant and their witness were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as outlined below.

The Tenant and their witness provided affirmed testimony in the hearing that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Tenant, was served on the Landlord by registered mail. The Tenant and their witness stated that the registered mail was sent to the Landlord at the address for service listed on the tenancy agreement on March 31, 2020, and provided me with the registered mail tracking number, which has been documented on the style of cause page for this decision. With the consent of the Tenant, I tracked the registered mail package on the Canada Post website and confirmed that the registered mail was sent as described above, and that it was delivered to a community mailbox on April 2, 2020.

As there is no evidence before me to the contrary, I accept that the address used for service of the Notice of Dispute Resolution Proceeding Package on the Landlord constitutes a valid address for service under the *Act* as it is the address for service for

the Landlord listed on the tenancy agreement in the documentary evidence before me. Section 90 (a) of the *Act* states that if not earlier received, documents sent by registered mail are deemed received 5 days after they are sent. As a result, I find that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Tenant, was deemed served on the Landlord on April 6, 2020.

Based on the above, and pursuant to rules 7.1 and 7.3 of the Rules of Procedure, the hearing proceeded as scheduled, despite the absence of the Landlord. Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the Application, and mailed to them at their mailing address.

#### Preliminary Matters

Although the Tenant selected the ground “I have another issue that is not listed” when filing their Application, under that section the Tenant clearly indicated that they are seeking the return of double the amount of their security deposit. The Tenant also submitted a Monetary Order Worksheet to that effect. As a result, I am satisfied that the Landlord was sufficiently advised by way of the Application and the Tenant’s documentary evidence, which I have already found above to have been deemed served, that the Application related to a monetary claim for double the amount of the security deposit. I therefore proceeded with the hearing as scheduled on that basis.

#### Issue(s) to be Decided

Is the Tenant entitled to the return of double the amount of their security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The one year fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began on January 5, 2019, and was set to end on December 31, 2019. The tenancy agreement states that rent in the amount of \$1,750.00 was due on the first day of each month and that a security deposit in the amount of \$875.00 was to be paid. In the hearing the Tenant stated that these are the correct terms of the tenancy agreement, that the \$875.00 security deposit was paid, and that to their knowledge, no amount of this deposit has been returned to them, or the other Tenant listed on the tenancy agreement.

The Tenant stated that they gave one month notice as required by the *Act* to end the tenancy on December 31, 2019, the end date of the fixed-term, and that the tenancy subsequently ended on that date. The Tenant and their witness stated that move-in and move-out condition inspections and reports were completed with the Landlord or the Landlord's agent in accordance with the *Act*, but that copies of the condition inspection reports were never provided to the Tenant. The Tenant and their witness stated that the move-out condition inspection was completed on the first Sunday of January, which was January 5, 2020, and that the Tenant provided their forwarding address in writing at that time, by way of including it in the applicable section of the move-out condition inspection report.

The Tenant stated that they never gave permission for the Landlord to retain any portion of the security deposit and that to their knowledge, the Landlord never filed a claim with the Residential Tenancy Branch (the "Branch") seeking to keep all or a portion of the security deposit. The Tenant stated that they are also unaware of any Monetary Orders against them from the Landlord. Further to this, the Tenant and their witness stated that the Landlord advised them that they would be keeping the security deposit for damage and cleaning costs. However, the Tenant disputed that the rental unit was damaged, except for reasonable wear and tear, or not left reasonably clean at the end of the tenancy.

As a result, The Tenant stated that the Landlord was obligated to return their security deposit to them, in full, within 15 days after January 5, 2020, and that they are now owed double the amount of their security deposit for the Landlord's failure to do so.

Neither the Landlord, nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

### Analysis

I accept the undisputed and affirmed testimony of the Tenant and the Witness as well as the documentary evidence before me with regards to the terms of the tenancy agreement, the payment of the security deposit, the condition inspections and reports, the end date for the tenancy and the provision of the Tenant's forwarding address. I also accept that no portion of the security deposit has been returned.

As there is no evidence before me that the Landlord had authorization under the *Act* to withhold all or a portion of the security deposit, I therefore find that they were obligated to either return it to the Tenant(s) or file a claim against it with the Branch, no later than January 20, 2020. As there is no evidence before me that the Landlord filed a claim with the Branch seeking to retain all or a portion of the security deposit, I therefore find that the Landlord was obligated to return it, in full, no later than January 20, 2020, pursuant to section 38 (1) of the *Act*. Given the dates of the tenancy, I find that no interest is payable on the security deposit under the regulation.

Although two tenants are listed on the tenancy agreement, only the Tenant C.W. is an Applicant in this matter. However, Residential Tenancy Policy Guideline 13 states that as a security deposit or a pet damage deposit is paid in respect of a tenancy agreement, and that any tenant who is a party to the tenancy agreement to which the deposit applies may therefore apply for dispute resolution for return of the deposit, regardless of who paid it. Pursuant to section 38 (6) of the *Act*, I therefore find that the Tenant is entitled to compensation from the Landlord in the amount of \$1,750.00, double the amount of the security deposit. Pursuant to section 72 of the *Act*, I also grant the Tenant recovery of the \$100.00 filing fee.

Based on the above, and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$1,850.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$1,850.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: July 10, 2020

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Residential Tenancy Branch