



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A return of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord their application for dispute resolution and evidence by registered mail sent on or about April 8, 2020. The tenant provided valid Canada Post registered mail tracking information as evidence of service. The landlord testified that they were out of the country and disputed that they were served with the tenant's materials.

While the landlord says that they were out of the country and could not have been served, pursuant to Residential Tenancy Policy Guideline 12 the failure or refusal of a party to accept or pick up registered mail does not override the deeming provisions of the Act. A landlord is in the business of providing residence and if the landlord were going to be out of the country they ought to have made alternate arrangements for service. It would be contrary to the principles of natural justice and procedural fairness to allow a party to evade service by going on extended trips.

I accept the tenant's evidence that they served the landlord by registered mail at the address for service provided on the written tenancy agreement on April 8, 2020. Based on the evidence I find that the landlord is deemed served with the materials on April 13,

2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act* and in any event has been sufficiently served in accordance with section 71 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit for this tenancy?  
Is the tenant entitled to recover their filing fee from the landlord?

### Background and Evidence

The parties agree on the following facts. This tenancy began in January 2019. A security deposit of \$725.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenancy ended December 31, 2019. The tenant provided a forwarding address in writing by a letter dated January 20, 2020. The tenant provided a photograph of the sent mail in documentary evidence. The landlord disputed receipt of a forwarding address, stating again that they were out of the country. The tenant did not authorize that the landlord may retain any portion of the deposit for this tenancy. The landlord has not filed an application for authorization to retain the deposit.

The landlord gave some testimony that the tenant is in breach of the tenancy as they gave notice to end earlier than the term of the fixed-term. The landlord submits that they are now entitled to retain the full deposit.

### Analysis

Section 88 of the *Act* provides the manners in which documents are to be served. The section reads in part:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

I accept the evidence of the tenant that they provided their forwarding address by ordinary mail dated January 20, 2020 to the address for service provided on the tenancy agreement. I find that the tenant served their notice of forwarding address on the landlord on January 25, 2020, five days after mailing, in accordance with sections 88 and 90 of the *Act*.

The landlord submits that they were out of the country and therefore were not served. I do not accept the landlord's argument that the tenant was barred from serving the landlord until such time as the landlord chose to return to the country and review their mail. As stated above the refusal or failure of a party to accept or pick up mail does not override the deemed service provisions of the *Act*. A landlord is responsible for informing the tenants of a change in service address or a viable way to contact them. A landlord may not simply choose to travel and expect that all communication be suspended until it is convenient for them.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

As I have found that the landlord is deemed served with the tenant's forwarding address on January 25, 2020, they had 15 days from that date to either return the security deposit in full or file an application for authorization to retain the deposit. I accept the evidence of the parties that the landlord did neither as of the date of the hearing.

The landlord testified that the tenant broke a fixed-term lease but I find this to be irrelevant to the matter at hand. The landlord has not filed an application for authorization to recover any loss of rental income. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct any portion of the security deposit.

If the landlord had concerns about unpaid rent or loss of rental income they were required to file an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security

deposit for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24(2) of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,450.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,550.00. The landlord must be served with this Order as soon as possible. Should the landlord 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: August 14, 2020

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Residential Tenancy Branch