



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, 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:

- Double the amount of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was 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 and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and their documentary evidence was sent to the Landlord by registered mail on May 13, 2020, at the address for service for the Landlord given to them by the agent for the Landlord who rented them the room. The Tenant provided me with the registered mail tracking receipt, the tracking number, the Landlord's address for service, and a screen print showing that the item was successfully delivered. The tracking number and the Landlord's address for service have been recorded on the cover page of this decision. Further to this, the Tenant stated that the above noted documents were also sent to the Landlord by email on May 13, 2020, at the email address used to correspond with the Landlord and agents regarding the tenancy. As the screen print did not show the date of the registered mail delivery, I find that the Landlord was deemed served with the above noted documents in accordance with the Act and the Rules of Procedure on May 18, 2020, five days after they were sent by registered mail, pursuant to section 90(a) of the Act. Pursuant rule 7.3

of the Rules of Procedure the dispute resolution hearing proceeded as scheduled despite the absence of Landlord or an agent acting on their behalf.

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 and determinative 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 emailed to them at the email address provided in the Application.

### Preliminary Matters

During the hearing I noted that the name of the Landlord listed in the Application was incomplete as it was missing "Inc.", which was contained in the name of the Landlord as shown in the tenancy agreement. With the Tenant's consent, I amended the Application to show the complete legal name for the Landlord.

### 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 Tenant stated that as a result of a water leak in their previous rental unit with another landlord, they needed to find a rental unit quickly. The Tenant stated that they found the Landlord online and after viewing approximately six rental units with an agent for the Landlord, they entered into a month to month tenancy with the Landlord on February 1, 2020, to rent a furnished room in a shared furnished apartment for \$1,500.00 per month, including utilities. The Tenant stated that a security deposit in the amount of \$750.00 was also paid. A copy of the tenancy agreement was submitted for my review and consideration along with proof that the Tenant paid rent for February and March of 2020 and the \$750.00 security deposit. Although the tenancy agreement in the documentary evidence before me is unconventional, the Tenant stated that it was a regular month to month furnished room rental, not a hotel, or vacation or travel accommodation, and that none of their roommates were the Landlord or an owner of the rental unit.

The Tenant stated that the tenancy ended on April 1, 2020, and that although they sent their forwarding address to the Landlord in writing by mail on April 20, 2020, their security deposit was not returned, and the Landlord's agents have stopped responding to their emails and text messages. Copy of the letter containing the Tenant's forwarding address, a receipt for the purchase of a stamp and a copy of the envelope containing the forwarding address were submitted in support of this testimony. The Tenant stated that no move-in or move out condition inspection reports were completed by the Landlord or the Landlord's agents or signed by them as required by the Act and regulations and that upon moving out, they were advised by the agent for the Landlord to put their keys under a pillow. A copy of a text message between the Tenant and an agent for the Landlord showing the above noted instructions was submitted for my review.

The Tenant stated that as there was no agreement for the Landlord to keep any portion of their security deposit, they are now entitled to the return of double the amount initially paid, as the Landlord has failed to return it or file a claim with the Residential Tenancy Branch (the Branch) seeking to keep it, within 15 days after receiving their forwarding address in writing. The Tenant also sought recovery of the filing fee.

No one appeared on behalf of the Landlord to provide any evidence or testimony for my consideration, despite my finding that the Landlord was deemed served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, on May 18, 2020.

### Analysis

Although the tenancy agreement in the documentary evidence before me references a "check-in" and "check-out" time, and a registration fee, there is no indication that the agreement pertains to vacation or travel accommodation or that the owner of the rental unit resides in the rental unit. There is also no indication that taxes are being charged, as would be required for hotel and travel accommodation, and a security deposit was both required by the Landlord and paid by the Tenant. Further to this, the rental unit, or portion thereof, was clearly rented to the Tenant on a monthly basis. Based on the above and given the Tenant's affirmed and uncontested testimony that they rented a furnished room on a month to month basis, I find that a tenancy under the Act existed between February 1, 2020 and April 1, 2020, which was not excluded under section 4 or any other section of the Act.

I accept the Tenant's documentary evidence and affirmed and uncontested testimony that the tenancy ended on April 1, 2020, that the Landlord failed to complete proper move-in and move-out condition inspections and reports as required by the Act and the regulations, and that their forwarding address was sent to the Landlord by mail on April 20, 2020. Pursuant to section 90(a) of the Act, I therefore find that the Tenant's forwarding address was deemed served on the Landlord on April 25, 2020, five days after it was sent.

As there is no evidence before me that the Landlord filed an Application seeking to retain the Tenant's security deposit or that the Landlord had a right under any other section of the Act to retain it, I therefore find that the Landlord was required, pursuant to section 38(1) of the Act, to return it to the Tenant no later than May 10, 2020. I accept the Tenant's affirmed and uncontested testimony that their security deposit was not returned to them and based on the above, I therefore find that the Landlord is required to pay the Tenant \$1,500.00, double the amount of the security deposit initially paid, pursuant to section 38(6) of the Act.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, the Tenant is therefore entitled to a Monetary Order in the amount of \$1,600.00 and I order the Landlord to pay this amount to the Tenant; \$1,500.00 for the return of double their security deposit, plus \$100.00 for recovery of the filing fee.

### Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,600.00**. 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 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: September 14, 2020

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Residential Tenancy Branch