



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Headwater Projects ITF Ger-Mex and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

MNDCT, 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, less the amount already returned, and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's support person, and an agent for the Landlord (the Agent), all of whom provided affirmed testimony. The Agent acknowledged receipt of the Application and the Notice of Hearing and both parties acknowledged receipt of each other's documentary evidence. Based on the above, and as neither party raised concerns regarding service of the above noted documents, I accepted the documentary evidence before me from both parties for consideration and the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Issue(s) to be Decided

Is the Tenant entitled to double the amount of their security deposit, less the amount already returned?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The first tenancy agreement in the documentary evidence before me for consideration, signed on September 30, 2016, stated that the one year fixed-term tenancy commenced on December 1, 2016, and contained a clause indicating that the Tenant was to vacate the rental unit at the end of the fixed term on November 30, 2017. It also stated that a security deposit in the amount of \$997.50 was paid. The second tenancy agreement in the documentary evidence before me, signed on October 10, 2017, states that a second one year fixed term tenancy agreement was entered into, which commenced on December 1, 2017, and ended on November 30, 2020. Rent under the second fixed term tenancy agreement stayed the same but the provision of a storage unit was removed.

During the hearing the parties confirmed that the above noted tenancy agreements are accurate and that the Tenant paid a \$997.50 security deposit. The parties also agreed that the Tenant lawfully ended their tenancy on October 15, 2020, after having given proper written notice to do so, that the Tenant's forwarding address was received by the Landlord in writing on September 22, 2020, prior to the end of the tenancy, and that both parties had complied with the Act and regulations in relation to condition inspections at the start and the end of the tenancy. They also agreed that the Tenant's original \$997.50 security deposit was returned, along with a refund of half a month's rent for October 2019 and the return of a \$100.00 key FOB deposit, but disputed the date on which it was returned and therefore whether the Tenant was entitled to double the amount of their initial security deposit, less the amount already returned.

The Agent for the Landlord stated that a cheque for the full amount of the Tenant's security deposit, plus the return of various other things such as a \$100.00 key FOB deposit and a refund for half of October 2019 rent was mailed to the Tenant between October 25, 2020, and October 28, 2020, in compliance with the Act. The ledger submitted by the Landlord shows \$2,284.62 was owed to the Tenant for a refund of the \$100.00 key FOB, the return of the \$997.50 security deposit, a refund of \$2795 in parking fees paid, and \$1,159.17 in rent for October 2019. The Agent stated that when

they were notified by the Tenant that it had not been received, they cancelled it as lost in the mail and reissued a new cheque, which the Tenant subsequently received.

The Tenant stated that their security deposit was not returned to them by October 30, 2020, as required by section 38(1) of the Act, and that they did not in fact receive it by regular mail until November 7, 2020. The Tenant stated that the post mark on the envelope in which the cheque was mailed is dated November 5, 2020, and that the cheque itself has an invoice date of November 5, 2020. The Tenant pointed out that the ledger submitted by the Landlord contains information about the refund of their deposit which is inconsistent with previous email correspondence from the Landlord's agents on this matter, information provided to them by and agent for the Landlord by phone on November 28, 2019, the cheque received, and the postmark on the envelope. The Tenant also questioned why copies of the original cheque allegedly mailed to them by the Landlord within the statutory timeframe was not submitted for my review and what proof that this cheque was indeed cancelled was also not submitted.

The Agent responded by stating that the Agent originally responsible for the file was no longer with the company and as a result, they had taken the file over with insufficient time to locate a copy of the original cancelled cheque and therefore a copy was not submitted for my review.

The Tenant also sought recovery of the \$100.00 filing fee.

### Analysis

As there was no dispute between the parties that a tenancy under the Act existed which was lawfully ended by the Tenant in accordance with the Act on October 15, 2020, that the Tenant's forwarding address was received by the Landlord in writing on September 22, 2020, that the Landlord was not entitled to withhold any portion of the security deposit, that neither party had extinguished their rights under the Act in relation to the security deposit, and that the amount of the original security deposit has since been repaid to the Tenant by the Landlord, I accept this as fact.

Based on the above, I find that the Landlord was required to either return the Tenant's \$997.50 security deposit to the tenancy by October 30, 2020, or file a claim against it with the Branch by that date. As there is no evidence before me that the Landlord filed an Application for Dispute Resolution in relation to the Tenant's security deposit and general agreement that the Tenant was entitled to its full return, I therefore find that the

Landlord was required by section 38(1) of the Act to return it to the Tenant, in full, by October 30, 2020.

Although the Agent argued that the full amount of the security deposit was mailed to the Tenant between October 25 – October 28, 2019, I am not satisfied that this is the case. Email correspondence in the documentary evidence before me from an agent for the Landlord to the Tenant on November 5, 2020, states that the original cheque was mailed to the Tenant on October 30, 2019, which is inconsistent with the testimony of the Agent in the hearing. Although the ledger submitted by the Agent states that the original cheque was issued on October 25, 2020, it states that it was not cancelled and re-issued until November 28, 2020, which is clearly inconsistent with the copy of the cheque from the Tenant with an invoice date of November 5, 2020, and the copy of the envelope postmarked November 5, 2020. Overall, I find the inconsistency of the Agents testimony with the other documentary evidence before me for consideration troubling.

Further to this, I agree with the Tenant that the Landlord should easily have been able to submit a copy of the original cheque showing its issue and cancellation date, or proof of its issuance and cancellation from the bank, if it had in fact been issued and sent as alleged by the Agent in the hearing and the other agent for the Landlord in the email dated November 5, 2020, and I do not accept that the Agent simply did not have the “time or manpower” to locate it prior to the hearing, as alleged. In any event, the Landlord’s failure to properly staff their office or maintain appropriate records is not a valid reason, in my mind, for failing to locate and submit relevant documentary evidence which they state exists, in support of their position. Given the above and the inconsistency of the Agents testimony with the documentary evidence before me, I therefore find the Tenant’s testimony and documentary evidence more persuasive and am therefore satisfied on a balance of probabilities that the cheque containing the Tenant’s security deposit refund was not issued and mailed by the Landlord or the Landlord’s agents until November 5, 2020, as shown on the cheque and the envelope post mark.

Based on the above, I find that the Landlord therefore failed to comply with the requirements set out in section 38(1) of the Act. Section 38(6) of the Act stated that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. Further to this, Residential Tenancy Policy Guideline (the Policy Guideline) #17 section C.5 sets out examples illustrate the different ways in which a security deposit may be doubled and I find that example A applies here. As a result, I find that the Tenant is entitled to

double the amount of their \$997.50 security deposit (\$1,995.00) as it was not returned in compliance with section 38(1) of the Act, less the \$997.50 later returned to the Tenant.

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 \$1,097.50 and I order the Landlord to pay this amount to the Tenant.

### Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,097.50**. The Landlord is provided with this Order in the above terms and the Tenant 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: September 17, 2020

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Residential Tenancy Branch