



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On May 9, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the Landlord to return of all or part of a security deposit, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenant appeared at the hearing; however, the Landlord did not.

The Tenant provided affirmed testimony that she served the Landlord with the Notice of Dispute Resolution Proceeding using Canada Post Registered Mail sent on June 5, 2020. The Tenant testified that the Landlord failed to provide her with a written tenancy agreement and did not provide her with a contact address for the Landlord. The Tenant testified that the Landlords property manager, Mr. J.M. refused to provide her with the owners address and stated that she should not waste her time trying to make a claim against the Landlord. The Tenant testified that the property manager stated that he will not provide the Landlords address so that she would not be able to make a claim.

The Tenant testified that she went to the Land Titles office and searched for the name and address of the registered owner of the rental unit. She testified that she sent the Notice of Dispute Resolution Proceeding using registered mail to the address she received from Land Titles.

Section 13 of the Act provides that a Landlord must prepare in writing every tenancy agreement and provide the tenant a copy within 21 days. The tenancy agreement must also provide the address for service and telephone number of the Landlord or the Landlord's agent.

I find that the Landlord failed to provide a tenancy agreement to the tenant within 21 days of entering into the tenancy agreement. The Tenant was not provided an address for service on the Landlord. I find that the Landlord breached section 13 of the Act.

I find that since it appears that the Landlord has failed to provide a service address with the intention of avoiding responsibilities under the Act, the Tenant's actions of obtaining the Landlord's address and serving the Notice of Dispute Resolution Proceeding to the address registered to the Landlord is reasonable.

The Tenant testified that she checked the status of the delivery using the Canada Post online service, and the delivery status shows that the mail was delivered. In accordance with my authority under section 71 of the Act, I find that the Landlord has been sufficiently served for the purposes of the Act with the Notice of Dispute Resolution Proceeding. The hearing proceeded.

The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- is the Tenant entitled to the return of the security deposit and or pet damage deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

#### Background and Evidence

The Tenant testified that on March 18, 2019 the parties entered into a verbal agreement for the tenancy to begin on April 1, 2019 on a month to month basis. Rent in the amount of \$800.00 was due to be paid to the Landlord by the 15th day of each month. The Tenant submitted that on March 18, 2019 she paid the Landlord's agent a security deposit of \$400.00. The Tenant provided a copy of a text message dated March 18, 2019 received from the Landlord's agent that states; *received \$400-dollar damage deposit for [the dispute address]. Move in date April 1.*

The Tenant testified that she was renting a trailer on the residential property and that she shared a kitchen and bathroom with other Tenants living in the house on the rental

property. The Tenant testified that the rental unit was her primary residence, not a short-term vacation type rental. The Tenant testified that the tenancy ended on May 15, 2019.

The Tenant testified that the Landlord did not return any amount of the security deposit to her after the tenancy ended.

The Tenant testified that there was no agreement written or otherwise that the Landlord could retain any amount of the security deposit.

The Tenant testified that she provided the Landlord with her forwarding address in writing using text to the Landlord's agent around May 30, 2019 and also in writing posted on the Landlord's door in May 2019. The Tenant provided a proof of service document where she attests that her forwarding address was again provided to the Landlord on July 2, 2020.

The Tenant is seeking the return of double the security deposit.

### Analysis

Based on the evidence and testimony of the Tenant, and on a balance of probabilities, I find as follows:

The owner of the residential property was served with notice to attend the hearing, but failed to attend to respond to the claim.

I accept the Tenants testimony regarding the tenancy agreement and I find that the provisions of the Act apply to the tenancy agreement entered into by the parties on March 18, 2019.

I find that the tenancy ended on May 15, 2019. Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenant provided her forwarding address to the Landlord on May 30, 2019. There is no evidence before me that the Landlord applied for dispute resolution after receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant that the Landlord could retain the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlord to pay the Tenant the amount of \$900.00. I grant the Tenant a monetary order in the amount of \$900.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with the legislation. The Landlord breached section 38(6) of the Act.

The Tenant is granted double the amount of the security deposit. I grant the Tenant a monetary order in the amount of \$900.00.

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 24, 2020

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Residential Tenancy Branch