



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 127 SOCIETY FOR HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD,

### Introduction

On August 4, 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 the pet damage deposit or security deposit.

The matter was scheduled as a teleconference hearing. The Tenant and Landlords agents appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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.

### Issue to be Decided

- Is the Tenant entitled to the return of a security deposit?

### Background and Evidence

The Tenant and Landlords testified that the tenancy began on September 1, 2019 as a one-year fixed term tenancy. Rent in the amount of \$996.00 was due to be paid to the Landlord each month. The Tenant paid the Landlord a security deposit of \$498.00.

The Tenant and Landlord testified that the Tenant paid the rent for the entire month of June 2020 and the parties attended a move out inspection on June 29, 2020.

The Tenant testified that she provided the Landlords with her forwarding address in writing on June 14, 2020. The Tenant stated that she had completed moving out of the rental unit by June 14, 2020.

The Tenant testified that the Landlords did not return the security deposit to her within 15 days of when the tenancy ended. She testified that she received a cheque for \$498.00; the amount of her security deposit on July 22, 2020. The Tenant's application indicates the envelope was time stamped by Canada Post on July 18, 2020.

The Tenant is seeking compensation of a further \$498.00 due to the Landlord failing to return the deposit within 15 days of the date the tenancy ended.

In reply, the Landlords testified that due to the covid 19 pandemic the Landlord experienced delays in having cheques processed and returned. The Landlord testified that the security deposit repayment cheque was processed on July 10, 2020 and was signed on July 14, 2020. The Landlord testified that the cheque was mailed to the Tenant using regular mail sent on prior to 2:00 pm on July 15, 2020. The Landlord testified that the mail was placed in a residential mailbox for Canada Post to pick up and deliver. The Landlord provided documentary evidence showing the date the cheque was processed on July 10, 2020.

The Landlord submitted that the security deposit was repaid to the Tenant within 15 days of the tenancy ending.

### Analysis

Section 44 of the Act provides that a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 [tenant's notice];
  - (i.1) section 45.1 [tenant's notice: family violence or long-term care];
  - (ii) section 46 [landlord's notice: non-payment of rent];
  - (iii) section 47 [landlord's notice: cause];

- (iv) section 48 [landlord's notice: end of employment];
  - (v) section 49 [landlord's notice: landlord's use of property];
  - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
  - (vii) section 50 [tenant may end tenancy early];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Section 38 (1) of the Act provides 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.

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

In accordance with section 44 of the Act, I find that the tenancy ended based on the Tenant's written letter dated May 18, 2020 that she will be moving out of her apartment on June 30th by 1:00 pm.

I find that the Tenant paid the rent for the entire month of June 2020 and had the right to possess the rental unit until the last day of June. I find that the Tenant chose to move out early. I find that the end date of the tenancy is the last day of the month for which the Tenant paid the rent. The Tenant's decision to move out early does not affect her right to possess the unit until June 30, 2020.

I accept that that the Tenant provided her forwarding address to the Landlord prior to moving out of the rental unit.

I have considered the language in section 38(1) of the Act. Section 38 provides that within 15 days of the date the tenancy ends, the Landlord must repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations.

The burden of proof rests with the applicant. While the Tenant suggested that the envelope was post marked by Canada Post on July 18, 2020, the Tenant did not provide documentary evidence in support of this. I find that the Landlord repaid the security deposit to the Tenant by mailing a cheque to her using regular mail sent on June 15, 2020.

I find that the Landlord has not breach section 38 of the Act by failing to repay the security deposit to the Tenant within 15 days.

### Conclusion

The Tenant's application for the Landlord to repay an additional \$498.00 of a security deposit as a penalty due to a breach of the Act is not successful and is dismissed.

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: December 2, 2020

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Residential Tenancy Branch