



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REGENT PARK (KEYLINK)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDS-DR

### Introduction

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

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38.

The landlords did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant's paper application only, not any submissions from the landlords. An "interim decision," dated October 5, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenant was required to serve the landlords with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The tenant testified that he served the landlords with the above documents on October 8, 2020, by way of registered mail to the service address provided by the landlords in the landlords' repayment plan, dated August 31, 2020. The tenant provided a copy of this document. The tenant provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were deemed served with the above required documents on October 13, 2020, five days after their registered mailings.

The tenant testified that he served the landlords with the tenant's application for dispute resolution hearing package on September 23, 2020, by way of registered mail to the service address provided by the landlords in the landlords' repayment plan. The tenant confirmed two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were deemed served with the tenant's application on September 28, 2019, five days after their registered mailings.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on June 1, 2019 and ended on August 1, 2020 with the tenant and another roommate. The tenant's roommate had a previous tenancy from a couple years prior with another occupant. Monthly rent in the amount of \$2,640.00 was payable on the first day of each month. A security deposit of \$640.00, of the total \$1,290.00 indicated in the tenancy agreement, was paid by the tenant and the landlords continue to retain this deposit. The tenant paid the deposit to his roommate, who reimbursed another occupant of the rental unit, who left before the tenant began this tenancy. The tenant provided a copy of the e-transfer document from May 21, 2019. The tenant's roommate paid a \$650.00 security deposit, of the \$1,290.00 total, to the landlords. A written tenancy agreement was provided for this hearing, indicating the former landlord, the tenant and the tenant's roommate. The current landlords assumed the tenancy in January 2020.

The tenant stated the following facts. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided. The tenant provided a written forwarding address by way of the move-out condition inspection report, signed on August 4, 2020. The tenant did not receive an application for dispute resolution from the landlords to retain the tenant's security deposit. The landlords did not have permission to keep the tenant's security deposit, although the tenant indicated that the

landlords could keep the entire \$1,290.00, but claimed it was an error in the move-out condition inspection report. He sent a text message to the landlords the next day on August 5, 2020, claiming that it was an error because he did not agree to any deductions to his security deposit.

The tenant seeks a return of double the amount of his security deposit of \$640.00, totalling \$1,280.00.

### Analysis

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings based on the testimony and written evidence of the tenant.

I find that the tenant paid a \$640.00 deposit to his roommate for this tenancy, as the tenant provided an e-transfer proof of same. I find that the landlords are responsible for its return to the tenant, pursuant to the written tenancy agreement which indicates a \$1,290.00 total deposit for this tenant and his roommate. The move-out condition inspection report, signed by the landlords and the tenant, also indicates that the tenant provided his share of the security deposit to the roommate. I find that the landlords were aware that the tenant paid his share of the deposit to the roommate and the tenant confirmed that the landlords never returned any of the \$1,290.00 deposit to the tenant, the roommate or the former occupant.

The tenancy ended on August 1, 2020. The tenant provided a written forwarding address to the landlords by way of the move-out condition inspection report on August 4, 2020.

I find that the tenant did not give the landlords written permission to retain any amount from his security deposit. I accept the tenant's testimony that he provided a text message to the landlords on August 5, 2020, the day after the move-out condition inspection on August 4, 2020, to clarify that he did not agree to the deduction of the \$1,290.00 indicated in the move-out condition inspection report, which does not state what any deductions were being used for. The landlords did not return the full deposit or make an application for dispute resolution to claim against the deposit within 15 days of the end of tenancy date and the forwarding address date.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of his security deposit of \$640.00, totaling \$1,280.00. There is no interest payable on the deposit during the period of this tenancy.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,280.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: December 10, 2020

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Residential Tenancy Branch