



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: MNSDB-DR, FFT  
For the landlord: MNDCL, MNDL-S, FFL

### Introduction

This hearing dealt with a cross application. The tenant's adjourned *ex-parte* application pursuant to the Residential Tenancy Act (the Act) is for:

- an order for the landlord to return the security and pet damage deposits (the deposits), pursuant to section 38; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's application pursuant to the Act is for:

- an authorization to retain the tenant's deposits under Section 38;
- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:55 P.M. to enable the tenant AY to call into this teleconference hearing scheduled for 1:30 P.M. The landlord, witness OM, tenant JY and agent YF attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This decision should be read in conjunction with the interim decisions dated August 12 and September 14, 2020.

### Preliminary Issue – Service of the tenant's application

The landlord confirmed receipt of the tenant's notice of hearing and evidence (the materials) on August 13 and August 31, 2020. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the tenant's application materials.

### Preliminary Issue – Service of the landlord's application

The landlord's application is against tenants JY and AY. The landlord affirmed he may have not served the notice of hearing to the tenants. Tenant JY stated she did not

receive the notice of hearing from the landlord, but received it from the Residential Tenancy Branch.

Tenants JY and agent YF both testified they do not represent tenant AY.

Section 89 of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a)by leaving a copy with the person;

(b)if the person is a landlord, by leaving a copy with an agent of the landlord;

(c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

(2)An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

(a)by leaving a copy with the tenant;

(b)by sending a copy by registered mail to the address at which the tenant resides;

(c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. **Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.**

**[emphasis added]**

Based on the landlord's testimony, I find the tenants were not served in accordance with the Act, as the notice of hearing was not served to both of them. As noted above, each respondent must receive the application and supporting evidence.

As such, I dismiss the landlord's application for an authorization to retain the tenants' deposits and a monetary order with leave to reapply. Leave to reapply is not extension of any applicable timeline.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

#### Preliminary Issue – Correction of Landlord's Name

At the outset of the hearing the landlord corrected the spelling of his first name. Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

#### Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return of the deposits?
2. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained Rule of Procedure 7.4 to the attending parties; it is the applicant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on November 01, 2018. Monthly rent was \$2,200.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,000.00 and a pet damage deposit of \$1,500.00 were collected and the landlord still holds them in trust. The tenancy agreement was submitted into evidence.

The tenant affirmed the tenancy ended on July 17, 2020. The landlord stated it ended on July 31, 2020.

The landlord confirmed he received the tenant's forwarding address in writing on July 17, 2020.

The tenant testified she did not authorize the landlord to retain the deposits.

### Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord's application for an authorization to retain the deposits was dismissed with leave to reapply.

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
  - (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- [...]
- 6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Branch Policy Guideline 17 states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Based on the landlord's coherent testimony and the tenancy agreement, I find the tenancy ended on July 31, 2020.

I accept the undisputed testimony and documentary evidence that the tenant gave the landlord written notice of her forwarding address on July 17, 2020 and did not authorize the landlord to retain the deposits. I also accept the landlord's testimony that he did not return the deposits.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find the tenant is entitled to a monetary award of \$5,000.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenant application is successful, I award the tenant the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$1,000.00 security deposit and \$1,500.00 pet damage deposit	5,000.00
Section 72 - Reimbursement of filing fee	100.00
<b>TOTAL</b>	<b>5,100.00</b>

### Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenant a monetary order in the amount of \$5,100.00

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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 07, 2020

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Residential Tenancy Branch