



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Argus Industries Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNSDS-DR**

### Introduction

A participatory hearing was scheduled pursuant to a decision issued by an Adjudicator on October 21, 2020 in response to the tenant's application for return of the security deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the tenant notified the landlord of the participatory hearing by way of registered mail sent on or about October 29, 2020. I also confirmed the landlord served its evidence to the tenant via registered mail sent on or about December 22, 2020. The hearing materials were admitted into evidence and considered in making this decision. I note that both parties included evidence pertaining to a damaged stove; however, the condition of a stove is not relevant to the dispute before me. I heard the parties have another hearing scheduled for April 30, 2020 to deal with the stove. Accordingly, the parties would be well served to ensure they submit/serve evidence concerning the stove for that proceeding.

The name of the landlord was amended to reflect the corporate landlord, with consent of both parties, as identified on the tenancy agreement.

### Issue(s) to be Decided

Is the tenant entitled to return of the security deposit and should it be doubled?

### Background and Evidence

The parties entered into a tenancy agreement for a tenancy that commenced on May 17, 2018. The tenant paid a security deposit of \$590.00. No other deposit was paid or collected. The tenancy ended on August 31, 2020.

A move-in inspection was performed and a move-in inspection report was prepared.

The parties participated in a move-out inspection on August 31, 2020 and a move-out inspection report was prepared. The tenant did not authorize any deductions from the security deposit and provided her father's name and address on the condition inspection report for the landlord to use to return the security deposit. The forwarding address includes a unit number which is listed as being unit #1.

The tenant submitted that the security deposit was not refunded so she proceeded to file the Application for Dispute Resolution by Direct Request on September 24, 2020. The Application for Dispute Resolution by Direct Request was sent to the landlord via registered mail on October 1, 2020.

The landlord submitted that a refund cheque for the full amount of \$590.00 was printed on September 9, 2020 and it was mailed to the tenant's father, as instructed on the move-out inspection report, via regular mail, along with a letter prepared by the landlord on September 15, 2020. The cheque was not cashed and then the landlord received the tenant's Application for Dispute Resolution by Direct Request so on October 8, 2020 the landlord proceeded to place a stop payment on the cheque with the reason being "lost cheque". The landlord provided as evidence: a copy of the cheque dated September 9, 2020, the letter dated September 15, 2020, and the stop payment placed on the cheque on October 8, 2020. There is no copy of the envelope used to send the cheque and the letter but I noted that the address appearing on the letter has unit #4 instead of #1.

The landlord submitted that on October 8, 2020 the landlord issued another cheque for \$590.00 and sent it to the tenant's father via courier on October 9, 2020. The last time the landlord checked with the accounting department the cheque dated October 8, 2020 had not yet been cashed. The landlord provided a copy of the cheque dated October 8, 2020 and a tracking printout from the courier. The address on the tracking sheet does not indicate a unit number where the package was delivered and it reflects "signature not available". The landlord did not have a copy of the envelope or a duplicate waybill used to send the courier package on October 9, 2020.

The tenant was skeptical that the landlord even sent the first cheque as the parties were in dispute concerning the stove. The tenant testified that she did live with her father during the month of September 2020 which is why she used her father's address as her forwarding address and there are several units in the building where her father's home is located. The tenant testified that the replacement cheque was not received either and her father has not had issues with receiving his mail at that location.

The landlord's agent submitted that the landlord tried to refund the full amount of the security deposit within the time limit for doing so and then when it became apparent the first cheque had not been received the landlord acted quickly to try to replace the cheque. If the cheques did not reach the tenant's father due to an incorrect address this was an unintentional error.

The tenant stated she does not waive entitlement to doubling of the security deposit.

### Analysis

Section 38 of the Act provides for disposition of a security deposit and/or pet damage deposit. Section 38(1) provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenancy ended and the tenant provided a forwarding address, in writing, on August 31, 2020. Further, the tenant did not authorize the landlord to make any deductions from the security deposit. Accordingly, I find the landlord had until September 15, 2020 to either refund the security deposit to the tenant or file an Application for Dispute Resolution to make a claim against the deposit.

The landlord did not file a claim against the security deposit but submitted that it refunded or attempted to refund the deposit on September 15, 2020. As such, I proceed to analyze whether the landlord refunded the deposit within the time limit for doing so.

In support of its position that it refunded, or attempted to refund the deposit, the landlord provided a copy of a cheque in the amount of \$590.00 that was printed on September 9,

2020 and a letter written by the landlord to the tenant, dated September 15, 2020 indicating the refund cheque was attached. The landlord provided oral testimony as evidence the letter and the cheque were mailed to the forwarding address provided by the tenant on the move-out inspection report, on September 15, 2020. The tenant was skeptical that the landlord mailed the refund cheque since there was no proof of mailing and the parties were in dispute concerning the stove.

Since there is no copy of the envelope used to mail the refund cheque and the landlord chose not to use mail that could be tracked, such as registered mail, I find I am left with inconsistent evidence concerning the address used to send the refund cheque, if it was in fact mailed. The landlord's oral testimony was that the refund cheque was mailed to the tenant's forwarding address, along with the letter, but the mailing address contained in the letter is not the tenant's forwarding address. Given this inconsistency, I find I am unsatisfied the landlord mailed the refund cheque to the tenant's forwarding address on September 15, 2020.

It appears likely to me that an error was made by the landlord in recording the tenant's forwarding address on the correspondence sent to the tenant, care of her father, when I consider the incorrect unit number on the letter of September 15, 2020, the omission of a unit number on the courier tracking printout and the neither cheque has been cashed. Although I accept the landlord's position that unintentional errors was made by the landlord in recording the tenant's forwarding address on the correspondence sent to the tenant, there is no exemption from the landlord's burden to comply with section 38(1) for exceptional circumstances or unintentional errors. Rather, if the landlord does not prove that it complied with section 38(1), the requirement to double the security deposit may only be waived by the tenant and the tenant did not waive entitlement in this case. Therefore, I find the security deposit must be doubled in accordance with section 38(6) of the Act and I provide the tenant with a Monetary Order in the sum of \$1180.00 to serve and enforce upon the landlord.

### Conclusion

The tenant is awarded double the security deposit and is provided a Monetary Order in the sum of \$1180.00 to serve and enforce upon the landlord.

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: February 10, 2021

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Residential Tenancy Branch