



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS - DR

### Introduction

This participatory hearing was set for 1:30 p.m. on this date, via teleconference call, pursuant to an Interim Decision issued by an Adjudicator on December 18, 2020 in response to the tenant's application for return of double the security deposit and request for compensation payable where a tenancy ends by way of a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") that was made under the Direct Request procedure.

Only the tenant and her Advocate appeared for the hearing. There was no appearance on part of the landlord despite leaving the teleconference call open for at least 15 minutes.

Since the landlord did not appear, I explored service of the hearing documents upon the landlord.

The tenant's Advocate submitted that the original proceeding package was sent to the landlord via registered mail on November 28, 2020; however, it was returned for the reason it was "refused" by recipient. A registered mail receipt, including tracking number, was provided as proof of service.

The tenant's Advocate submitted that the Interim Decision and Notice of Dispute Resolution Proceeding was sent to the landlord via registered mail on December 22, 2020 and it too was returned for being "refused" by the recipient. A registered mail receipt, including tracking number, was provided as evidence.

As for the address used for mailing, the tenant and her Advocate stated the registered mail was sent to the landlord's service address that appears on a letter the landlord

wrote on October 10, 2015. The tenant testified that the landlord used the same service address in issuing her the 2 Month Notice.

Pursuant to section 90 of the Act, a party is deemed to be in receipt of documents mailed to them five days after mailing, even if the recipient refuses to accept or pick up their mail.

In light of the above, I was satisfied the tenant met her obligation to serve the landlord in a manner that complies with the Act (registered mail sent to the landlord's service address) and as ordered by the Adjudicator and I deemed the landlord to be served five days after mailing even though he refused to accept the mail. Accordingly, I proceeded to hear from the tenant without the landlord present.

On another matter, the tenant requested her claim for compensation for receiving a 2 Month Notice be withdrawn, without prejudice, as she did not submit/serve a copy of the 2 Month Notice. Since there was no appearance by the landlord, I was satisfied there was no prejudice to the landlord in granting the tenant's request. Therefore, I dismiss the tenant's request for compensation for receiving a 2 Month Notice with leave to reapply.

For the remainder of this decision, I consider the tenant's request for return of double the security deposit.

#### Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

#### Background and Evidence

The tenant submitted that a tenancy started with the former landlord on March 23, 2012 and the tenant paid a security deposit of \$400.00, as evidenced by a Shelter Information document prepared and signed by the former landlord. On or about October 2015 the named landlord acquired the property, as seen in a letter written by the landlord on October 10, 2015.

The tenant testified that the tenancy ended on October 31, 2020 when she vacated the rental unit.

The tenant testified that she participated in a move-in inspection with the former landlord and a move-out inspection with the current landlord's agent.

The tenant testified that she did not authorize the landlord to retain any part of her security deposit and the security deposit was not refunded to her.

On October 5, 2020 the tenant, with the assistance of an Advocate, sent a letter to the landlord via Xpresspost, requesting return of the security deposit and a forwarding address was provided in the letter. A copy of the letter and the Xpresspost receipt was provided as evidence.

Since sending the letter of October 5, 2020 the tenant has not received a refund of her security deposit. Nor, has the landlord made a claim against her security deposit and the tenant did not authorize the landlord to retain her security deposit in writing.

### Analysis

Section 38(1) of the Act 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, I accept the unopposed evidence before me that the tenant paid a security deposit of \$400.00 to the former, as seen on the Shelter Information document. As provided under section 93 of the Act, the obligations of a landlord with respect to a security deposit run with the land or reversion. Thus, if the landlord changes, the new landlord retains these obligations.

Based on the unopposed submissions before me, I also accept that the tenancy ended on October 31, 2020 when the tenant vacated the rental unit. Further, the landlord was sent a forwarding address by way of a letter sent Xpresspost on October 5, 2020.

Pursuant to section 90 of the Act, I find the landlord is deemed to be in receipt of the tenant's forwarding address five days after mailing the forwarding address October 5, 2020, or October 10, 2020. A tenant has one year from the time a tenancy ends to provide the landlord with a forwarding address and I find the tenant met that obligation. Accordingly, I find the landlord had until October 25, 2020 to either: refund the security

deposit to the tenant, file a Landlord's Application for Dispute Resolution to make a claim against it, or get the tenant's written consent to retain it. Since the landlord did none of these things, I find the landlord violated section 38(1) of the Act and must now pay the tenant double the security deposit, or \$800.00, in accordance with section 38(6) of the Act.

In light of the above, I find the tenant entitled to return of double the security deposit, as requested and, with this decision, I provide the tenant with a Monetary Order in the amount of \$800.00 to serve and enforce upon the landlord.

### Conclusion

The tenant is awarded return of double the security deposit, in the amount of \$800.00. The tenant is provided a Monetary Order in the amount of \$800.00 to serve and enforce upon the landlord.

The tenant's request for compensation payable for receiving a 2 Month Notice is dismissed with leave to reapply. It is important to note that this does not extent any application time limit for making an Application for Dispute Resolution.

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: March 19, 2021

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Residential Tenancy Branch