



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gramercy Enterprises  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 4, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- I want compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property

The Tenant and Landlord both attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's application, Notice of Hearing, and evidence. No issue was raised with this service. The Landlord did not provide any documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to 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.

### Preliminary Matters

I note the Tenant selected the above ground on his application form, however, he also provided a written explanation as to what exactly he was seeking, which was different from the ground he selected. The Tenant clearly identified that he is seeking the return of double his security deposit, and not as a result of a Notice to End Tenancy. As the issues the Tenant was seeking were sufficiently clear, and known to both parties

leading up to the hearing, I hereby amend the Tenant's application, pursuant to section 64(3) of the Act to reflect the appropriate ground as follows:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 38

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for double the security deposit because the Landlord failed to return his deposit within 15 days?

Background and Evidence

Both parties agree that the Tenant moved out of the rental unit on November 30, 2020, which is the same day the move-out inspection was completed, and the same day the Tenant returned the keys to the Landlord. The Tenant stated he never gave his forwarding address in writing to the Landlord, but rather he verbally told the Landlord what his address would be at the move out inspection. The Landlord acknowledges being told this address, as this is where he sent the deposit back to.

The parties confirmed the Tenant paid a security deposit in the amount of \$850.00 at the start of the tenancy. The parties also agree that this amount has since been returned, via cheque in the mail.

The Tenant is seeking to an additional \$850.00, pursuant to section 38(6) of the Act, because the Landlord took too long to return the deposit. The Tenant stated he received his cheque back in the mail on December 22, 2020. The Tenant also pointed to the post marks on the envelop, which show Canada Post stamped it on December 19, 2020, although the Tenant could not verify if this is when it was mailed, or some other processing date.

The Landlord stated he mailed this cheque back to the Tenant on December 15, 2020, but he had no proof of mailing.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, in order for the Tenant to receive double the security deposit (less the amount returned already), he would have to sufficiently demonstrate he fulfilled section 38(1) of the *Act*, which includes providing a forwarding address to the Landlord in writing. I acknowledge the Landlord appears to have taken note of the Tenant's forwarding address at the move-out inspection when the Tenant provided it verbally. There is no dispute that the Landlord returned the original deposit, in full. At this point, the issue is whether or not the Tenant is entitled to an additional \$850.00 due to the Landlord's breach of section 38(1) of the *Act*.

I find the Tenant is not eligible for the doubling provisions under section 38 of the *Act*, because he did not provide his address, in writing. I do not find telling the Landlord, verbally, is sufficient to trigger section 38(6) of the *Act*. I dismiss the Tenant's application, in full, without leave.

### Conclusion

The Tenants' application has been dismissed, without leave to reapply.

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: May 04, 2021

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Residential Tenancy Branch