



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTHA HOLDINGS (AKA: SUTHA HOLDINGS LTD.) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDS-DR FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for the return of their security deposit, plus the recovery of the cost of the filing fee.

The tenant originally applied for a Direct Request Proceeding, which was adjourned to a participatory hearing based on the Interim Decision from an adjudicator dated January 5, 2021, which should be read in conjunction with this decision.

On this date, May 7, 2021, the participatory hearing began and the tenants and the owner of the landlord holding company, SN (landlord) attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed being served with an email referred to in the hearing, which I will describe further below and the landlord was deemed served as the tenant provided a registered mail tracking number, which has been included on the style of cause for ease of reference. According to the online Canada Post tracking information, the package was mailed on December 14, 2020 and that the package was successfully delivered on December 15, 2020. In addition, the landlord confirmed that they had received an email from the RTB reminding them of the hearing and the application. As a result, I am satisfied on serve under the Act.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Secondly, I have amended the tenant's application to reflect the correct legal name of the landlord holding company pursuant to section 64(3)(c) of the Act.

Thirdly, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issues to be Decided

- Is the tenant entitled to the return of their security deposit under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. There was a flaw with the tenancy agreement which was the lack of a service address and phone number for the landlord, which I will address later in this decision. Although the tenancy began on January 1, 2020, the parties agreed that the tenancy ended by way of a Mutual Agreement to End Tenancy as of September 1, 2020.

The tenant paid a security deposit of \$425.00, which has accrued \$0.00 in interest and which the landlord continues to hold. The tenant presented a copy of their written forwarding address dated November 9, 2020, which the landlord did not dispute having received as an email was presented by the landlord dated October 21, 2020 (email) which supports that the landlord was not returning the tenant's security deposit until the rental unit keys were returned. In addition, the tenant provided a Proof of Service document, which states that the written forwarding address of the tenant was served on November 9, 2020 and was witness by MC. The landlord confirmed that they did not

have permission to keep any amount of the \$425.00 security deposit in writing, and have not filed an application to claim against the tenant's security deposit.

The tenant also confirmed during the hearing that they were not waiving their right to double the security deposit under the Act if they were so entitled.

### Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I will first deal with the flaws in the tenancy agreement. Section 13(2)(e) of the Act requires that a landlord provided their address for service and telephone number of the landlord or their agent, which I find the landlord failed to do. As a result, I **caution** the landlord to comply with section 13(2)(e) of the Act in the future.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

#### **Return of security deposit and pet damage deposit**

**38(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.**

[emphasis added]

Given the above and considering the tenant's written forwarding address provided in evidence that includes a Proof of Service document to support it was served, I find the landlord failed to obtain written permission to retain any portion of the tenant's security deposit. In addition, I find the landlords failed to either claim against the tenant's security deposit or return the full security deposit of \$425.00 within 15 days of receiving the tenant's written forwarding address, which I find was deemed served three days after November 9, 2020, pursuant to section 90 of the Act. Therefore, given my finding that the landlord was served with the tenant's written forwarding address, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of double the security deposit of \$425.00 for a total of **\$850.00**. I note that the security deposit has accrued \$0.00 in interest since the start of the tenancy. Based on the above, I find the tenant has met the burden of proof.

As the tenant paid a filing fee of \$100.00 and their application was successful, I grant the tenant **\$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of \$950.00, comprised of \$850.00 for double the security deposit, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$950.00**.

**I caution** the landlord not to breach section 38(1) of Act in the future.

### Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$950.00 as indicated above.

The landlord has been cautioned as noted above.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlord. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is reminded that they may be liable for all costs associated with enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 7, 2021

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Residential Tenancy Branch