



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding H & L Condo Services Inc.  
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") under the *Residential Tenancy Act* ("Act"), for the return of double the security deposit that the Landlord is holding without cause; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and an agent for the Landlord, L.L. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agent said she had received the Application and the documentary evidence from the Tenant, and had reviewed it prior to the hearing. The Agent confirmed that the Landlord had not submitted any documentary evidence to the RTB or to the Tenant for this proceeding.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I also advised the Parties that they are not allowed to record the hearing, and that

anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2018 and ran to April 30, 2019, with a monthly rent of \$1,950.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$975.00, and no pet damage deposit. The Tenant said he moved out of the residential property on April 30, 2019, as he was returning to his home province for an internship after his studies.

The Tenant said that the Agent had his permanent address on the application form he filled out when applying for the rental unit prior to the start of the tenancy. The Agent said that she might have it in the file, although, she did not have the rental unit file with her for the participatory hearing. The Tenant also said he wrote his forwarding address on the condition inspection report ("CIR") that the Parties completed at the end of the tenancy, although the Landlord disagreed that the Tenant participated in a move-out inspection of the rental unit. The Tenant said the condition inspection was conducted on April 27, 2019, and that the Landlord was pleased with the condition of the rental unit.

The Agent said that the Tenant was in a hurry to catch a plane and that he did not stay for the move-out walk-through of the unit. She said the rental unit was left in a filthy condition and that it cost her more than she owed in the security deposit to bring it back to its condition at the start of the tenancy. I advised the Landlord that if this was the case, then she should have applied for dispute resolution for an order to retain the security deposit from the Tenant. However, the Agent confirmed that she did not apply for dispute resolution, and that she kept the Tenant's security deposit. I advised the Agent that I was concerned with her response to this situation, given her statement that she has been managing 25 buildings for a number of years. I **cautioned** her that it was her obligation to inform herself of and to abide by her responsibilities under the Act.

The Tenant submitted a copy of two emails he sent the Agent. The first is dated May 18, 2019, and states:

Hello [Agent and (corporate) Landlord],

I rented [rental unit address] from September 1<sup>st</sup> 2018 to May 1<sup>st</sup> 2019. On April 27<sup>th</sup> 2019 [the Agent] came to the apartment to perform a final check before I vacated. After that meeting went smoothly, I left the following day.

It is now May 18 and well past the 14 day limit for the return of my damage deposit. I have tried to get in contact with [the Agent] for my damage deposit but it has come to no avail. I am hoping that we can resolve this issue as soon as possible.

Thank you,  
[Tenant]

The second email from the Tenant to the Landlord was dated July 4, 2019, and states:

Hi [C. and the Agent]

I spoke to [the Agent] over the phone last night, as well as through multiple phone calls and text messages since we moved out 3 months ago.

As of July 4, 2019 there has been no action. While I do not wish to apply for dispute resolution requesting my deposit be returned (in which the landlord may be ordered to pay the tenant double the amount of the deposit), we have waited far more than the 15 days for our damage deposit.

If we do not hear anything by the end of tomorrow, we will proceed with this process and send a written letter of notice.

Regards,  
[Tenant and Y.]

The Tenant submitted a Proof of Service – Tenant Forwarding Address for Return of Security Deposit or Pet Damage Deposit – Form #RTB-41 (“RTB-41”). This form had the Tenant’s forwarding address, the Agent’s name, the rental unit address, and the Landlord’s address. The Agent confirmed in the hearing that this is her home address. This form was signed by a witness and stated that the witness, C.H., observed the Tenant provide his forwarding address to the Landlord by registered mail sent on April 16, 2020.

In the “Special Details” section of the RTB-14, the Tenant wrote:

Finding [the Agent’s] address was incredibly difficult and time-consuming. While I was certain that I left [my forwarding address] on the move-out report, such a document was never forwarded to me. I wanted to deliver my forwarding address in person. But when I went to both the address on the tenancy agreement as well as the one listed on the company website, neither of them could be found. I found the local building security manager and he gave me [the Agent’s] phone number and I got the address from there.

### Analysis

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

I find that it is more likely than not that the Tenant provided his forwarding address to the Landlord on April 27, 2019 on the CIR. However, as neither Party submitted a copy of this document, I find that the latest the Tenant provided his forwarding address to the Landlord was on April 25, 2020, five days after it was sent to her by registered mail, pursuant to section 90 of the Act. Further, I find that the tenancy ended on April 30, 2019. Section 38(1) of the Act states the following about the connection of these dates to a landlord’s requirements surrounding the return of the security 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.

At the very latest, the Landlord was required to return the Tenant’s \$975.00 security deposit to him within fifteen days of April 25, 2020, namely by May 10, 2020, or to apply

for dispute resolution to claim against the security deposit, pursuant to section 38 (1). The Agent provided no evidence that the Landlord returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with their obligations under section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant **\$1,950.00** from the Landlord for double the \$975.00 security deposit, pursuant to sections 38 and 67 of the Act. Given that the Tenant was successful in his Application, I also award him recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act, for a total Monetary Award of **\$2,050.00**.

### Conclusion

The Tenant's claim against the Landlord for return of double the security deposit is successful in the amount of \$1,950.00. The Landlord did not return the Tenant's security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenant's forwarding address. I award the Tenant with double the amount of the \$975.00 security deposit, plus recovery of the \$100.00 Application filing fee.

I grant the Tenant a Monetary Order from the Landlord in the amount of **\$2,050.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and 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: July 08, 2021

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Residential Tenancy Branch