



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security and pet deposits (the deposits), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:53 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. Tenant TT (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant TT represents tenant ST. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on February 18, 2021 and with the notice of hearing and interim decision on March 08, 2021, in accordance with section 89(1)(c) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on February 23, 2021 and the notice of hearing and interim decision on March 13, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Are the tenants entitled to:

- an order for the landlord to return the deposits?
- an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained Rule of Procedure 7.4 to the attending party; it is the tenants' obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on December 01, 2019 and ended on December 31, 2020. Monthly rent was \$1,800.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$900.00 and a pet damage deposit of \$400.00 were collected. The landlord returned \$399.84 on March 02 and currently holds in trust \$900.16. The tenancy agreement was submitted into evidence.

The tenant testified she did not share the kitchen or bathroom with the landlord. The front door of the rental building gives access to two independent rental suites, the landlord's family occupied one of the suites, and the tenants occupied the other suite.

The tenant stated she served the landlord with the forwarding address in writing by registered mail on January 15, 2021 (the tracking number is recorded on the cover of this decision). A copy of the letter was submitted into evidence. The tenant did not authorize the landlord to retain the deposits. This application was filed on February 07, 2021.

### Analysis

I accept the undisputed testimony that the tenancy ended on December 31, 2020, the tenants served the landlord their forwarding address in writing on January 15, 2021 and did not authorize the landlord to withhold the deposits. The landlord has not brought an

application for dispute resolution claiming against the deposit and only returned \$399.84.

Given the evidence of registered mail, the landlord is deemed to have received the forwarding address on January 20, 2021, in accordance with section 90(a) of the Act.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

- (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.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

[...]

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

-if the landlord has not filed a claim against the deposit within 15 days of the later

of the end of the tenancy or the date the tenant's forwarding address is received in writing;

-if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$2,200.16 (double \$1,300.00 minus \$399.84).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposits.

As the tenants were successful in this application, the tenants are entitled to recover the \$100.00 filing fee.

In summary, the tenants are entitled to \$2,300.16.

### Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenants a monetary order in the amount of \$2,300.16.

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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 15, 2021