



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. The tenant attended. The hearing process was explained, and the tenant had the opportunity to ask questions. The tenant had the opportunity to make submissions, present documentary evidence, and call witnesses.

The tenant affirmed they were not recording the hearing. The tenant also confirmed the email addresses of the parties.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fifty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for both landlords had been provided.

Preliminary Issue – Service of Notice of Hearing and Evidence Package

As the landlord did not attend the hearing, I considered whether the tenant served the landlord as required under the Act.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 12, 2021 to the landlord's business address; the documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on March 17, 2021. The tenant provided a copy of the receipt and the Canada Post Tracking Number in support of service. The tenant submitted a document entitled Application Form for Tenancy signed by the tenant in which the landlord provided their business address to which the registered mail was sent.

The Act sets out how documents must be served. Section 89(c) of the Act addresses service by registered mail. The entire section 89 states as follows:

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*
[emphasis added]

The Rules of Procedure set out the obligation of the applicant, the tenant in this case, to provide proof of service. Section 3.5 states as follows:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Further to the tenant's credible evidence, which is well supported by documents, I find the tenant served the landlord as required under the Act on March 17, 2021.

Preliminary Issue – Doubling

I informed the tenant of the provisions of section 38 of the Act which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to a doubling of the security deposit under section 38?

Is the tenant entitled to reimbursement of the filing fee under section 72?

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant did not submit a copy of the tenancy agreement as she stated she had misplaced it.

The tenant submitted a document entitled Application Form for Tenancy, signed by the tenant when she applied to the landlord to move in to the unit. The document supports her testimony regarding the particulars of the agreement which are summarized in the following table:

ITEM	DETAILS
Type of tenancy	Fixed term – 1 year

Date of beginning	January 5, 2020
Date of ending	October 25, 2020
Monthly rent payable on 1 st	\$2,450.00
Security deposit	\$1,225.00
Pet deposit	None
Outstanding rent	none

The tenant testified that the parties agreed the tenant could vacate the unit early.

The tenant testified that an agent of the landlord, L.M., met with the tenant and her mother, B.K., for the inspection on October 20, 2020. The names of the agent and the tenant's mother appear on the first page. The tenant testified that the unit was in good condition and the submitted Report reflected this. No damage was noted. The tenant also testified that she wrote her forwarding address in the Report. The tenant stated the agent took a copy of the signed Report which includes her forwarding address/

In support of her testimony, the tenant submitted a copy of a Condition Inspection Report signed by the tenant on October 20, 2020, indicating the tenant provided a forwarding address at the time of the move-out inspection.

The Report was not signed by the landlord, an oversight which the tenant did not notice at the time. The landlord gave the tenant a copy of the Report signed solely by her.

The tenant did not agree that the landlord withhold any of the security deposit and no withholding was noted in the Report. The tenant testified the agent promised a full return of the security deposit.

The tenant testified they received \$650.00 as partial return of the security deposit on December 19, 2020. They said they repeatedly requested that the landlord return the balance of the deposit and provide an explanation for the hold back. No reply has been received and the balance of the security deposit has not been paid.

The tenant testified that the landlord has not filed an application to retain the security deposit.

The tenant requested return of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

The tenant requested reimbursement of the filing fee of \$100.00.

The landlord clarified their monetary claim during the hearing which is summarized in the following table:

ITEM	AMOUNT
Security deposit	\$1,225.00
Security deposit - doubling	\$1,225.00
(Less partial return)	(\$650.00)
Filing fee reimbursement	\$100.00
TOTAL CLAIM	\$1,700.00

The tenant requested a Monetary Order in the amount of **\$1,700.00**.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Security deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security 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.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this

provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenants gave the landlord written notice of their forwarding address on October 20, 2020.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of **doubling of the security deposit**.

Filing Fee

As the tenant is successful in the application, I award the tenant reimbursement of the filing fee under section 72.

Summary

In conclusion, I award the tenant a monetary award calculated as follows:

ITEM	AMOUNT
Security deposit	\$1,225.00
Security deposit doubling	\$1,225.00
(Less partial return)	(\$650.00)
Filing fee reimbursement	\$100.00
TOTAL MONETARY ORDER	\$1,700.00

Conclusion

I grant the tenant a Monetary Order in the amount of **\$1,700.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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

Residential Tenancy Branch