



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on June 25, 2021, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 25, 2021 and are deemed to have been received by the landlord on June 30, 2021, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on February 26, 2020, indicating a monthly rent of \$2,150.00 and a security deposit of \$1,075.00, for a tenancy commencing on March 1, 2020
- A copy of an e-mail from the tenant to the landlord dated November 24, 2020, providing the forwarding address
- A copy of a reply e-mail from the landlord also dated November 24, 2020
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 6:13 pm on November 24, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant and indicating the tenancy ended on September 30, 2020

### Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$1,075.00, as per the tenancy agreement.

I accept the following declarations made by the tenant on the Tenant's Direct Request Worksheet:

- The tenant has not provided consent for the landlord to keep all or part of the deposit
- There are no outstanding Monetary Orders against the tenant for this tenancy
- The tenant has not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*

I accept the tenant's statement on the Tenant's Direct Request Worksheet that the tenancy ended on September 30, 2020.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenant sent their forwarding address to the landlord by e-mail, which is not a method of service permitted under section 88 of the *Act*. However, I am satisfied that

the landlord received the tenant's forwarding address on the day the landlord replied to the tenant's e-mail.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the forwarding address on November 24, 2020.

I accept the evidence before me that the landlord has failed to return the deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit by December 9, 2020, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Therefore, as of the date of this application, June 7, 2021, I find that the tenant is entitled to a monetary award in the amount of \$2,150.00, the amount claimed by the tenant for double the security deposit.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2,250.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 07, 2021

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Residential Tenancy Branch