



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR

### Introduction

The tenant seeks the return, and doubling, of his security deposit pursuant to section 38(6)(b) of the *Residential Tenancy Act* (“Act”). On February 21, 2021 the tenant applied for the return and doubling of his security deposit by way of direct request application. After reviewing the application, an adjudicator adjourned the matter to a participatory hearing; the reason for this adjournment is explained in the adjudicator’s Interim Decision of March 22, 2021.

Both parties attended the hearing on Monday, August 23, 2021.

### Preliminary Issue: Service of Evidence

During the preliminary stage of the hearing, the tenant explained that he did not serve copies of any of his documentary evidence on the landlord; the landlord confirmed that she had not received any evidence from the tenant. The landlord testified that she served copies of her evidence on the tenant’s address used in his application. However, her evidence was returned undelivered because there was missing the required unit number on the tenant’s address. Copies of the returned mail was photographed and submitted into evidence by the landlord. (It should be noted that the tenant has not included any unit number on his address of service on the application.)

Rule 3.5 of the [\*Rules of Procedure\*](#) requires that an applicant must be prepared to demonstrate that the respondent was served with the Notice of Dispute Resolution Proceeding package and all of the applicant’s evidence. The tenant admitted that he did not serve the landlord with any evidence. Given that a fundamental requirement of an administrative hearing is the provision of evidence on the opposing party and given that the tenant had failed to meet this requirement, the tenant’s documentary evidence will not be admitted or considered in rendering this decision.

Regarding the landlord's service of evidence, I find that she met her obligations of serving evidence on the tenant at his address for service. The landlord cannot be faulted for using an address that the tenant failed to properly provide. The landlord's documentary evidence will be accepted and considered in rendering this decision.

### Issue

Is the tenant entitled to the return and doubling of his security deposit?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on October 1, 2019 and ended on October 31, 2020. Monthly rent was \$1,100.00 and the tenant paid the landlord a security deposit of \$550.00. A copy of the residential tenancy agreement was submitted into evidence.

The tenant testified that he sent his forwarding address to the landlord in a letter. He could not remember the exact date. When asked if he could provide even an approximate date, he answered "I can't remember."

After mailing his forwarding address, the tenant received a cheque for \$550.00. However, he did not and has not cashed it. He "mentioned it" – the inability to cash the cheque – to the landlord but received no response. When asked about why he had not cashed the cheque he stated that he had "nowhere to cash it." He testified that despite going to many places to try and cash the cheque, everywhere needed it to be certified.

Later in the hearing, during rebuttal, the tenant testified that perhaps the cheque is a legitimate cheque, but that he was simply unable to cash it. And, while he also said that he messaged her multiple times, he received no response from the landlord.

The landlord testified that the chequing account from which she issued the tenant's security deposit cheque is in good standing. A letter dated March 30, 2021 from her bank (a division of CIBC) confirms that the landlord's "account is being maintained in good standing. In the past year, there have been no items returned as 'Non-Sufficient Funds' from your account."

The landlord further testified that the tenant still has the cheque and that it is cashable. "He can cash it at any time," she reiterated. Further, the landlord said that the tenant never, ever contacted her at any time about the problem he was apparently facing in cashing the cheque. No text, no phone call, and no in-person contact. Certainly, she said that if he was really having a problem cashing the cheque, he could have mailed it back to her or found another way to receive the return of the security deposit.

The landlord argued that the tenant is simply trying to create a loophole, whereby he sits on the cheque for a few months and then applies for dispute resolution claiming double the amount.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

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.

In this dispute, the tenant could not recall the single most important piece of information needed in such a dispute: when he sent his forwarding address in writing to the landlord. Without that information, and without any supporting documentary evidence, I cannot determine whether the landlord in fact returned the security deposit within 15 days after receiving his forwarding address.

However, what is clear is that the landlord did return the tenant's security deposit by cheque. The tenant acknowledges receiving this cheque. However, for reasons that I find difficult to believe (or, for reasons that were never adequately explained), the tenant submits that he is unable to cash the cheque anywhere. According to the tenant, the cheque must be certified.

To be frank, I do not find the tenant's testimony or explanation as to his apparent cheque-cashing problem to be credible. Indeed, the tenant provided no documentary evidence from any financial institution proving that the cheque could not, or cannot, be cashed. The tenant apparently banks online, but he has submitted no evidence from even his own bank to show that an attempt to cash the cheque was ever made.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for either the return of the security deposit (since he has already received the return of the deposit) or for the doubling of the security deposit (which he is not entitled to given his failure to prove when he provided his forwarding address or when he received the cheque).

### Conclusion

**The tenant's application is hereby dismissed, without leave to reapply.**

This decision is made on delegated authority pursuant to section 9.1(1) of the Act.

Dated: August 23, 2021

---

Residential Tenancy Branch