



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR**

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 tenant attended and was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the tenant with an opportunity to ask questions.

The tenant confirmed they were not recording the hearing.

The tenant provided the email address to which the Decision would be sent.

Preliminary Issue – Service Upon Landlord

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 June 16, 2021 and deemed received by the landlord under section 90 of the Act 5 days later, that is, on June 21, 2021.

In support of service by registered mail, the tenant provided a copy of the mailing receipt which included the Canada Post tracking number. Considering the tenant's testimony and supporting evidence, I find the tenant served the landlord as required by the Act with the Notice of Hearing and Application for Dispute Resolution on June 21, 2021.

Preliminary Issue – Landlord's Attendance

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the landlords 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 the landlords was provided.

Preliminary Issue – Previous Decision on Direct Request

This hearing followed a previous Decision of an Adjudicator made on June 14, 2021 under this file number.

The previous Decision followed a Direct Request Proceeding by the tenant which was the tenant's first application for the return of the security deposit. The Adjudicator ordered the direct request proceeding be reconvened in accordance with section 74 of the Act to determine certain details of the tenant's application. The tenant had not submitted a copy of the tenancy agreement.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, a doubling of the security deposit, and reimbursement of the filing fee?

Background and Evidence

The tenant provided substantial testimony and supporting documentation including correspondence and banking information. Not all the evidence is referenced in my Decision. Only key relevant facts are mentioned.

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

The tenant testified as follows.

The parties entered into a verbal tenancy agreement. The tenant testified as follows with respect to the background of the tenancy.

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	October 1, 2020
Date of ending	April 1, 2021
Monthly rent payable on 1 st	\$750.00
Security deposit	\$350.00
Pet deposit	\$350.00
Forwarding address provided	April 2, 2021 - personal service
Proof of Service RTB Form submitted	yes

Date of tenant's application	May 20, 2021
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On September 28, 2020, the tenant e-transferred the security deposit and pet deposit to the landlord and provided documentary evidence of the transfer, a copy of the bank statement.

The tenant vacated the unit after provision of one month notice. No condition inspection was conducted on moving out. The landlord has claimed to keep the deposits as compensation for alleged damages caused by the tenant.

The landlord has not filed an Application for Dispute Resolution claiming against the security deposit or pet deposit.

The tenant claims reimbursement of double the security deposit as the landlord did not return the security deposit within 15 days of the later of the end of the tenancy or the provision of the forwarding address in writing.

The tenant also claimed \$100.00 for reimbursement of the filing fee.

The tenant claimed as follows:

ITEM	AMOUNT
Security deposit and pet deposit	\$700.00
Double the Deposits	\$700.00
Reimbursement of the Filing Fee	\$100.00
TOTAL CLAIM	\$1,500.00

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

The Act contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the Act, the landlord is required 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(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

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 the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the Act.

I find the tenant provided their forwarding address in writing by personal service upon the landlord pursuant to section 38(1)(b) on April 2, 2021.

I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the Act by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit and pet deposit.

Accordingly, I grant the tenant a monetary award in the amount as claimed.

My award to the tenant is summarized as follows:

ITEM	AMOUNT
Security deposit and pet deposit	\$700.00
Double the Deposits	\$700.00
TOTAL AWARD	\$1,400.00

Conclusion

I order the landlord pay to the tenant the sum of **\$1,400.00**. I grant the tenant a Monetary Order in this amount.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: November 29, 2021

Residential Tenancy Branch