



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Recording and Email Address

The parties testified they were not recording the hearing. They each confirmed their email addresses to which the Decision shall be sent.

Preliminary Issue – Direct Request Hearing

This hearing was reconvened pursuant to the Decision of an Adjudicator of June 29, 2021 made without a participatory hearing pursuant to section 38.1 of the Residential Tenancy Act.

The Adjudicator ordered that the proceeding be reconvened as there was no indication of whether the bathroom or kitchen facilities were shared as the landlord's residence and the unit rented by the tenant had the same municipal address.

Preliminary Issue – Service

The tenant provided affirmed testimony that they served the landlord with the Adjudicator's Decision, the Notice of Hearing and Application for Dispute Resolution by registered mail sent on June 29, 2021 to the landlord's residential address. During the hearing, the landlord confirmed the address was correct.

Under section 90 of the Act, the documents are deemed received by the landlord five days later, that is, on July 4, 2021.

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.

In support of the testimony regarding service, the tenant submitted a copy of the tracking history from Canada Post which included the tracking number and the receipt. The tracking information indicated the mail had been collected.

The landlord denied receipt. The landlord testified he learned about the hearing during a call to the RTB.

I find the tenant has met the burden of proof that they served the documents as testified and as supported by the submitted credible evidence. I find the tenant served the landlord on July 4, 2021 pursuant to the Act.

Preliminary Issue – Doubling of Security Deposit

The provisions of section 38 of the *Act* 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 the following?

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

Background and Evidence

The parties provided considerable testimony in an 85-minute hearing. Not all this evidence is referenced in my Decision. I refer to only key, relevant, and admissible evidence.

A copy of the tenancy agreement was submitted. The parties testified that the unit is a basement suite, and the landlord resides overhead in the building. No facilities are shared. The tenant was the sole occupant of the unit when the tenancy ended.

The parties agreed on the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	June 1, 2020
Date of ending	April 1, 2021
Monthly rent payable on 1 st	\$2,260.00
Security deposit	\$1,100.00

Pet deposit	0
Forwarding address provided	Hand delivered April 1, 2021 (disputed) Registered mail received July 4, 2021 (Disputed)

Service of Forwarding Address

The tenant testified she hand delivered her written forwarding address to the landlord on April 1, 2021. The landlord denied receipt.

The tenant submitted a copy of a letter from the tenant to the landlord dated April 15, 2021, providing the forwarding address, and requesting the return of the deposit. The tenant testified they sent the letter with the forwarding address to the landlord by registered mail on April 19, 2021. The tenant submitted 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 registered mail at 7:40 pm on April 19, 2021. The tenant also submitted a copy of a Canada Post tracking report containing the Tracking Number to confirm the forwarding address was in fact sent to the landlord on April 16, 2021.

The landlord denied receipt of the forwarding address.

Condition Inspection Report

The parties agreed no Condition Inspection Report was completed on moving in or moving out.

Damages to Unit

The landlord testified the tenant damaged the unit which the tenant denied. The landlord submitted photographs to support the claim for damages. The landlord stated they have not brought an Application for Dispute Resolution or obtained a Monetary Order with respect to their claim.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, 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.

Section 38 of the *Act* requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. The parties entered into a tenancy agreement as described above. A security deposit of \$1,100.00 was paid by the tenant and the landlord continues to retain this deposit. Move-in and move-out Condition Inspection Reports were not completed for this tenancy. The landlord received a written forwarding address from the tenant, by way of a letter, dated April 15, 2021 and sent to the landlord by registered mail on April 16, 2021. Under section 90 of the *Act*, the letter is deemed received 5 days later, that is, on April 21, 2021. The landlord has not filed an Application for Dispute Resolution to keep the security deposit.

The landlord did not have written permission to keep any amount from the security deposit.

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.

In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of their security deposit of \$1,100.00, totalling \$2,200.00.

As the tenant was successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

I grant a Monetary Order to the tenant of \$2,300.00.

Conclusion

I grant the tenant a Monetary Order of \$2,300.00. This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced as an Order of the Courts of the Province of British Columbia.

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: December 09, 2021

Residential Tenancy Branch