



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSDS-DR

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for a monetary order for \$1,050 representing two times the amount of the security deposit pursuant to sections 38 and 62 of the Act.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued October 4, 2021.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:44 pm in order to enable the landlord to call into the hearing scheduled to start at 1:30 pm. The tenant and his assistant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenant, his assistant, and I were the only ones who had called into the hearing.

The tenant testified he served that the landlord with the notice of reconvened hearing, the interim decision, and all other required documents via registered mail on October 6, 2021. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with these documents on October 11, 2021, five days after the tenant mailed them, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the tenant entitled to a monetary order of \$1,050?

### **Background and Evidence**

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

The parties entered into a written tenancy agreement starting August 1, 2019. Monthly rent was \$1,050. The tenant paid the landlord a security deposit of \$525, which the landlord continues to hold in trust for the tenant.

The parties conducted a move-in condition inspection at the start of the tenancy. The tenant vacated the rental unit on September 15, 2020. At the end of the tenancy, a representative of the tenant attended the rental unit at a previously agreed to time to conduct a move-out inspection with the landlord, but the landlord did not attend. The tenant is unsure of the date, but believes it was sometime in late September or early October 2020. He testified that eventually the move-out inspection occurred, as his representative emailed him and told him that the landlord would not be charging him for anything. He submitted a copy of this email, dated October 16, 2020.

The tenant testified he served the landlord with his forwarding address on May 4, 2021 by fax. He submitted the fax into evidence.

The tenant testified that the landlord has not returned the security deposit nor has it applied to the Residential Tenancy Branch (the “RTB”) to keep it.

### **Analysis**

Section 38(1) of the Act states:

#### **Return of security deposit and pet damage deposit**

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.

Based on the undisputed testimony of the tenant, I find that the tenancy ended on September 15, 2020 and that the tenant provided his forwarding address in writing to the landlord on May 4, 2021.

I find that the landlord has not returned the security deposit to the tenant within 15 days of receiving their forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant.

Accordingly, I find that the landlord has failed to comply with its obligation under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that it pay the tenant double the amount of the security deposit (\$1,050).

### **Conclusion**

Pursuant to sections 38 and 62 of the Act, I order that the landlord pay the tenant \$1,050.

I order the tenant to serve the landlord with a copy of this decision and attached order as soon as possible after receiving it.

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: January 28, 2022

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Residential Tenancy Branch