



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the Act), seeking:

- The return of double the amount of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's adult child A.P., who acted as their interpreter, the Landlord, and the Landlord's adult child A.Y., who acted as their interpreter. All testimony provided was affirmed. The Tenant stated that the Notice of Dispute Resolution Proceeding Package, which includes the Application and the Notice of Hearing, and the documentary evidence before me from the Tenant, was sent to the Landlord by registered mail on August 4, 2021. The Tenant provided me with the registered mail tracking number, a copy of the registered mail receipt, and a copy of the registered mail address sticker showing the Landlord's name and the registered mail tracking number. The Canada Post tracking website shows that the registered mail was sent on August 4, 2021, that a notice card was left on August 6, 2021, and that it was delivered on August 9, 2021. At the hearing the Landlord acknowledged receipt as set out above.

Residential Tenancy Branch (Branch) records show that the Notice of Dispute Resolution Proceeding Package was made available to the Tenant on August 3, 2021. As I am satisfied that a copy was mailed to the Landlord on August 4, 2021, I find that the Tenant complied with section 59(3) of the Act and rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). As a result, the hearing proceeded as scheduled and I accepted the documentary evidence before me from the Tenant for consideration. As the Tenant acknowledged personal receipt of the Landlord's documentary evidence on January 28, 2021, I also accepted the Landlord's documentary evidence for consideration.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

#### Preliminary Matters

As the tenancy agreement shows the same street address for the Landlord and the Tenant, and no unit numbers are given, I asked the parties at the hearing if the Landlord and Tenant resided in the same property at the same time and whether they had shared a kitchen or bathroom. They stated they had not. As a result, I find that section 4(c) of the *Act* does not apply.

#### Issue(s) to be Decided

Is the Tenant entitled to the return of double the amount of their security deposit?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy commenced on August 1, 2018, and that it could continue on a month to month basis after the conclusion of the fixed term on July 31, 2019. The tenancy agreement states that rent in the amount of \$3,600.00 is due on the first day of each month and that a security deposit in the amount of \$1,800.00 was required. At the

hearing the parties agreed that these were the correct terms of the tenancy, and that the \$1,800.00 security deposit had been paid.

The parties agreed that the tenancy ended on either June 30, 2021, or July 1, 2021, after the Tenant served the Landlord with a one month notice to end tenancy, in writing, on May 30, 2021. The parties agreed that the Landlord had returned \$1,001.37 of the \$1,800.00 security deposit to the Tenant, by cheque, on July 13, 2021, and that the remaining \$798.63 had been retained by the Landlord. There was agreement between them that condition inspections were completed at the start and the end of the tenancy, but that no condition inspection reports had been completed. There was also agreement between them that at the time the tenancy ended, the Landlord did not have a decision from the Branch authorizing them to retain any portion of the security deposit, a monetary order against the Tenant from the Branch which remained unpaid, or written approval from the Tenant to retain any amount of the security deposit.

Finally, the parties agreed that the Tenant has not yet provided the Landlord with their forwarding address in writing.

### Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies existed between the parties, which ended on either June 30, 2021, or July 1, 2021, after the Tenant provided proper written notice to end their tenancy to the Landlord on May 30, 2021. I am also satisfied that a \$1,800.00 security deposit was paid, only \$1,001.37 of which has been returned to the Tenant.

Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4)(a), of the *Act*, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the parties at the hearing, I am satisfied that the Landlord did not have authority to retain any portion of the Tenant's security deposit under section 38(3) or 38(4) of the *Act*. As section 23(4) requires that landlords complete a move-in condition inspection report in accordance with the regulations at the start of a tenancy, and the parties agreed at the hearing that this was not done, I find that the Landlord

extinguished their right to claim against the security deposit only in relation to damage to the residential property, pursuant to section 24(2)(c) of the *Act*. Residential Tenancy Policy Guideline (Policy Guideline) #17 states that in relation to a landlord's right to retain a security deposit and a tenant's right to its return, the party who breaches the *Act* first with regards to condition inspections and reports, shall bear the loss. As I have found above that the Landlord breached the *Act* at the start of the tenancy by failing to complete a condition inspection report with the Tenant in accordance with the regulations, I find that the Landlord breached the *Act* first, and that it is therefore unnecessary to determine if the Tenant breached the *Act* with regards to condition inspections or reports at a later time. As a result, I find that section 38(2) of the *Act*, which exempts landlords from complying with section 38(1) of the *Act*, does not apply.

Having made the above findings, I will now turn my mind to whether the Landlord was required to either return the full amount of the Tenant's security deposit to them, or file a claim against it with the Branch. As the parties agreed that the Tenant had not yet provided the Landlord with their forwarding address in writing, I therefore find that the obligations of the Landlord under section 38(1) of the *Act* have not yet been triggered, and that the Tenant's Application is premature. I therefore dismiss the Tenant's Application seeking the return of double the amount of their security deposit, with leave to reapply. As the Tenant's Application was dismissed, I decline to grant the Tenant recovery of the \$100.00 filing fee.

### Conclusion

The Tenant's Application seeking the return of double the amount of their security deposit is dismissed with leave to reapply. The Tenant's Application seeking the return of the filing fee for this Application is dismissed without leave to reapply.

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: February 4, 2022