



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSDS-DR**

### Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for monetary compensation for the return of the security deposit pursuant to Sections 38, 62 and 67 of the Act.

The hearing was conducted via teleconference. The Applicant, ZC, and Legal Advocate, JJ, attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Applicant, his Legal Advocate, and I were the only ones who had called into this teleconference. The Applicant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Applicant and his Legal Advocate that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Applicant and his Legal Advocate testified that they were not recording this dispute resolution hearing.

The Applicant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on February 13, 2022 by Canada Post registered mail (the "NoDRP package"). The Applicant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on February 18, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issue to be Decided

Is the Applicant entitled to monetary compensation for the return of his security deposit?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Applicant confirmed that this periodic tenancy began on September 2, 2019, and ended on March 24, 2020. Monthly rent was \$520.00 payable on the last day of the previous month. A security deposit of \$520.00 was collected at the start of the tenancy and was not returned by the Landlord.

The Applicant provided his forwarding address by email to the Landlord on May 1, 2020. The Applicant also served his forwarding address using Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit #RTB-41 form on August 20, 2020 by Canada Post registered mail. On January 3, 2022, the Applicant sent his forwarding address to the Landlord by registered mail. The Applicant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service.

The Applicant uploaded a Title Search print off showing that the rental address is owned by a person whose name is noted on a document that the Applicant received confirming that the Landlord had received a \$520.00 security deposit from the Applicant on September 2, 2019.

The Applicant testified that he gave the Landlord a chance to conduct the move-in condition inspection at the beginning of the tenancy, but no inspection was done and no report was signed. At the end of the tenancy, the Applicant said a move-out condition inspection was not completed, and no report was signed.

The Applicant did not authorize the Landlord to retain the security deposit at the end of the tenancy.

## 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.

Based on the Applicant's undisputed testimony, I accept that the Landlord neither conducted a move-in condition inspection pursuant to Section 23 of the Act, nor provided an executed report on move-in in accordance with Section 18(1)(a) of the *Residential Tenancy Regulation* (the "Regulation"). Further, based on the undisputed testimony, I accept that the Landlord neither conducted a move-out condition inspection pursuant to Section 35 of the Act, nor provided an executed report on move-out in accordance with Section 18(1)(b) of the Regulation.

The Applicant's tenancy ended on March 24, 2020. The Applicant provided his forwarding address to the Landlord on three occasions: on May 1, 2020 by email; on August 20, 2020 by Canada Post registered mail; and, on January 3, 2022 by Canada Post registered mail. The notice sent on January 3, 2022 is beyond the one year after the end of the tenancy. I find the Applicant notified the Landlord of his forwarding address on August 20, 2020 on the required form and consider this the date the Landlord received the forwarding address.

Sections 24(2)(a) and 36(2)(a) of the Act specify that the Landlord's claim against a security deposit for damage to residential property is extinguished if the Landlord does not provide at least two opportunities to conduct a condition inspection on move-in or move-out respectively. I find the Landlord's claim against the security deposit for damage to the rental unit is extinguished as the Landlord did not provide the Applicant with two opportunities to conduct a condition inspection on move-in or on move-out.

Section 38 of the Act requires a landlord to either return a tenant's security or pet damage 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 the date the landlord receives the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to Section 38(6)(b) of the Act, equivalent to double the value of the security and/or pet damage deposit. The Applicant did not provide authorization for the Landlord to retain an amount from the security deposit to pay a liability or obligation owed. There has been no Arbitrator Order allowing the Landlord to retain an amount from the security deposit.

I find the tenancy ended on March 24, 2020 and the Applicant provided his forwarding address in writing on August 20, 2020. The 15 day time limit after receipt of the Applicant's forwarding address was September 4, 2020. I find the Landlord did not make an application for dispute resolution claiming against the security deposit. I find the Landlord's right to claim against the deposit was extinguished pursuant to Sections 24(2)(a) and 36(2)(a) of the Act and they must therefore pay the Applicant twice the amount held in trust.

The Applicant is entitled to a Monetary Award representing repayment of his security deposit pursuant to Section 38(1)(c) of the Act. The Monetary Award is calculated as  $\$520.00 \times 2 = \$1,040.00$ .

### Conclusion

I grant a Monetary Order to the Applicant in the amount of \$1,040.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: May 26, 2022

---

Residential Tenancy Branch