



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD

### Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 38.1 of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution by the tenant to obtain monetary compensation for the return of double the security deposit (the “Deposit”) and to recover the filing fee paid for the application.

On December 17, 2021, the tenant's application was considered, and the Adjudicator determined that this matter should be adjourned to a participator hearing. The interim decision should be read in conjunction with this Decision, as the Adjudicator made findings of service of the documents on the landlords.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, , and make submissions at the hearing.

The tenant confirmed they received the landlord's evidence. The landlords did not receive the tenant's evidence because they had refused service of the original documents.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

### Background and Evidence

The tenancy began in August 2016. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 was paid by the tenant. The tenancy ended on October 1, 2021.

The tenant testified that they vacated the premises on October 1, 2021 . The tenant stated that they provided the landlord with a written notice of the forwarding address on September 20, 2021, which was sent by registered mail on September 20, 2021. The tenant stated that the landlord refused the package. Filed in evidence is a copy their forwarding address and a copy of the Canada Post tracking history which shows the recipient/landlords refused to accept the package on September 25, 2021, and it was returned to the sender.

The landlord testified that they did refuse to accept the Canada Post package as the tenant could have delivered their forwarding address to them in person as they were living upstairs. The landlord stated that their husband was not going to play this game with the tenant.

The landlord testified that they have not returned the tenant's Deposit as they believe the tenant owes them rent for September 2021, and for cleaning costs.

The landlord confirmed they did not make any application for dispute resolution claiming against the Deposit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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 tenant sent their forwarding address to the landlords on September 21, 2021, by registered mail. Registered mail is an allowable method of service under the Act, not a game played by the tenant. I find the landlords were served with the tenants forwarding address on September 25, 2021, which was the date the landlords refused to accept the Canada Post package. Section 5 of the Act states, Landlords and tenants may not avoid the Act and any attempt to avoid the Act has no effect.

In this case, the landlord was served with the tenant's forwarding address prior to the tenancy ending on October 1, 2021. I find the landlords had within 15 days of the tenancy ending to either return the Deposit to the tenant or make an application claiming against the Deposit, if they believed the tenant had breached the Act, such as unpaid rent.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposit. I find the landlords have breached 38(1) of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord **must pay** the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant(s) the sum of **\$1,350.00**, comprised of double the Deposit (\$625.00) on the original amounts held and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords 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. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

### Conclusion

The tenant's' application for return of double the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: May 12, 2022

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Residential Tenancy Branch