



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNSDB-DR, FFT**

### **Introduction**

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the tenant's application pursuant to sections 38 and 72 of the *Residential Tenancy Act* (the "Act") for monetary compensation for the return of the security deposit and the pet damage deposit (the deposits) and to recover the filing fee paid for the application

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended, assisted by counsel and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

### **Preliminary Issue – Service**

The tenant provided evidence that the Interim Decision and Notice of Hearing were served on the landlord by registered mail sent on November 30, 2021 identifying the name of the corporate landlord provided on the signed tenancy agreement and mailed to the address for service provided on the same agreement. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find the landlord deemed served with the tenant's materials on December 5, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. I note that pursuant

to Residential Tenancy Policy Guideline 12 the failure of a party to pick up materials sent by registered mail does not rebut the deeming provisions of the *Act*.

I note that an agent of the corporate landlord has submitted into documentary evidence a letter dated June 14, 2022 stating they are unaware of the present hearing and have not been able to submit evidence. I find it logically inconsistent that a party is able to upload documentary materials into the correct dispute resolution file, stating that they are unaware of the details of the hearing and are unable to upload evidence.

In their written submission the agent of the landlord claims that they are unable to pick up materials served by registered mail as the name of the respondent that was used on the signed tenancy agreement and the present application should have been another name. I find that the tenant correctly identified the corporate landlord as named on the tenancy agreement prepared by the landlord.

Pursuant to section 13(2)(b) the tenancy agreement must contain the correct legal names of the parties. While I have no information as to whether the name of the respondent used on the tenancy agreement and the current application is their correct legal name, I find that the name used by the applicant in their application is the name provided by the landlord on the signed tenancy agreement. I find that any inability on the part of the respondent to receive or collect mail arises from the name they provided on the tenancy agreement.

I therefore find that the landlord is deemed served on December 5, 2021, and in any event has been sufficiently served in accordance with section 71(2)(c) of the *Act*.

#### Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

#### Background and Evidence

This tenancy began on November 1, 2019. Monthly rent was \$775.00 payable on the first of each month. A security deposit of \$387.50 and pet damage deposit of \$387.50 were paid at the start of the tenancy and are still held by the landlord. The tenant also paid a key deposit of \$100.00 which is held by the landlord.

The tenancy ended in December 2020. The tenants provided a forwarding address in writing by a letter dated December 29, 2020 which was served on the landlord by placing in a mail slot on that date. The tenant has not authorized the landlord to retain any portion of the deposits.

The tenant gave evidence that they have attempted to return the keys to the rental unit and obtain a return of the key deposit from the landlord but the landlord has been uncooperative in arranging for the exchange.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenant's undisputed evidence that they provided their forwarding address to the landlord by a letter dated December 29, 2020 which was placed in the mail slot on that date. Pursuant to section 88(f) leaving a copy in a mailbox or mail slot is an accepted means of serving a document such as a forwarding address. In accordance with section 90(d) I find the landlord is deemed served with the forwarding address on January 1, 2021, three days after placing in the mail slot.

I accept the evidence of the tenant that the landlord has not returned any amount of the security or pet damage deposit within 15 days of January 1, 2021 or at all. I further accept that the tenant is not aware of the landlord filing an application for authorization to retain the deposits. I find that the tenant has not provided written authorization that the landlord may retain any portion of the deposits.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security and pet damage deposit in full within 15 days of the date they are deemed to have received the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with

section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,550.00 Monetary Order, double the value of the security and pet damage deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the tenant that the landlord retains a deposit of \$100.00 and the tenant retains the keys to the rental unit as the landlord has been uncooperative in informing the tenant of the method by which the keys could be returned.

I find that the landlord has breached the tenancy agreement by retaining the deposit for keys and failing to inform the tenant of how the keys could be returned for this past tenancy. I accept the undisputed evidence that the amount of the deposit held by the landlord for the keys is \$100.00 and issue a monetary award in the tenant's favour for that amount accordingly.

As the tenant was successful in their application they are also entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,750.00. 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 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 *Residential Tenancy Act*.

Dated: June 27, 2022

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Residential Tenancy Branch