



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AYL Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDS, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The respondent was represented by agent MD. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – named Landlord

MD affirmed the named landlord Prospero International Realty Inc. (the named landlord) is a property manager and that the correct landlord is Ayl Holdings Ltd. MD represents

the named landlord and Ayl Holdings Ltd. MD stated that Ayl Holdings Ltd. is aware of this application.

The tenancy agreement submitted into evidence indicates the landlord is Ayl Holdings Ltd.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to remove the named landlord and to include the proper landlord - Ayl Holdings Ltd. as the respondent of this application.

### Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the deposit?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on July 01 and ended on November 30, 2021. Monthly rent was \$2,700.00, due on the first day of the month. At the outset of the tenancy a deposit of \$1,350.00 was collected.

Both parties agreed the tenant served and the landlord received the forwarding address in writing on November 30, 2021. The tenant authorized the landlord to retain \$275.00 from the deposit. The landlord returned \$1,075.00 on December 17, 2021.

The tenant is claiming double the deposit because the landlord returned the deposit late.

MD testified the landlord returned the deposit late because she forgot to send it by the deadline.

## Analysis

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit:

- (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.

[...]

- 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.

Residential Tenancy Branch Policy Guideline 17 states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

-if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

-if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

[...]

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the

monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

- Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ( $\$400 - \$100 = \$300$ ;  $\$300 \times 2 = \$600$ ).

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).

I accept the undisputed testimony that the tenancy ended on November 30, 2021, the landlord received the forwarding address in writing on November 30, 2021, the tenant authorized the landlord to retain \$275.00 from the deposit, the landlord returned \$1,075.00 on December 17, 2021 and did not submit an application for dispute resolution.

Per section 38(1) of the Act, as the landlord confirmed receipt of the forwarding address in writing on November 30, 2021 and the tenancy ended on that date, the landlord had to return the deposit until December 15, 2021 or to submit an application for dispute resolution.

Under these circumstances and in accordance with section 38(6) of the Act and Policy Guideline 17, I find the tenant is entitled to a monetary award of \$1,075.00 ( $1,350.00 - 275.00 = 1,075.00 \times 2 = 2,150.00 - 1,075.00 = 1,075.00$ ).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

As the tenant's application is successful, I award the tenant the return of the filing fee.

In summary, the tenant is entitled to \$1,175.00.

Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,175.00.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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: August 16, 2022

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Residential Tenancy Branch