



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSDB-DR**

### Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on January 1, 2018. Monthly rent for the tenancy was \$1,200.00 payable on the first of each month. A security deposit of \$600.00 and pet damage deposit of \$200.00 were collected at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at anytime for this tenancy.

The tenancy ended by way of a settlement agreement reached at a hearing under the file number on the first page of this decision. The tenancy ended on November 5, 2021.

The parties agree that the tenant provided an envelope to the landlord on November 5, 2021 by placing it in the landlord's mailbox. The tenant submits that the envelope contained their forwarding address in writing as well as the keys for the rental unit. A photograph of the letter was submitted into evidence. The landlord confirmed receipt of the envelope on November 5, 2021.

The landlord submits that they believe the envelope received on November 5, 2021 was contaminated with excrement as it was moist to the touch, was discolored on the outside and smelled unpleasant. The landlord submitted a photograph of the envelope. The landlord said they disposed of the envelope without opening it and were never served with the tenant's forwarding address. The landlord has also submitted a large volume of materials regarding damage to the rental unit and general complaints about their ongoing conflict with the tenant.

The tenants have not authorized the landlord to retain any portion of the deposits for this tenancy.

### Analysis

Section 24 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not complete a copy of a condition inspection report in accordance with the regulations.

I accept the undisputed evidence of the parties that no condition inspection report was prepared for this tenancy. I therefore find that the landlord has extinguished their right to claim against the deposits for this tenancy.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant's security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If the fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security and pet damage deposit.

The tenant submits that they provided a forwarding address to the landlord in writing on November 5, 2021. The landlord confirmed receipt of an envelope from the tenant on that date but submits that they disposed of it as they believed it to be contaminated. The landlord disputes being served with the forwarding address as they did not open the envelope received.

I do not find the landlord's position to be reasonable or supported in the evidence. The photograph they submitted shows a sealed standard sized envelope with little discoloration. I find little evidence that the envelope has been tampered with as the landlord claims with excrement smeared on the outer surface. I further find the landlord's suggestion that the envelope contained feces to be conjecture with little air of reality. In order to believe the landlord's version of events it is necessary for the tenant to spend their time collected feces and placing it into an envelope, sealing the envelope and hand delivering it to the landlord's mailbox. I find the landlord's suggestion stretches credulity and has little air of reality.

Pursuant to section 88(f) leaving a copy in the mailbox at the address where the landlord resides or carries on business is an acceptable means of service. Based on the testimony of the parties, I find that the landlord was duly served with the tenant's

forwarding address on November 5, 2021. I find the landlord's choice to dispose of the envelope provided by the tenant does not override the service provisions of the *Act*. I find that the landlord was served with the tenant's forwarding address on November 5, 2021 in accordance with section 88 of the *Act* and in any event was sufficiently served pursuant to section 71(b) on that date. Therefore, the landlord was required to return the security and pet damage deposit within 15 days of that date. I accept the undisputed evidence of the parties that the landlord has failed to return any portion of the deposits.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant's security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If the fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security and pet damage deposit. Therefore, I find the tenant is entitled to a monetary award in the amount of \$1,600.00, double the value of the security and pet damage deposit for this tenancy.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,600.00. 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: August 18, 2022

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Residential Tenancy Branch