



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSDS-DR, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. The tenants ("the tenant") and the landlord attended. The hearing process was explained, and they had the opportunity to ask questions. The parties had the opportunity to make submissions, present documentary evidence, and call witnesses.

The parties confirmed they were not recording the hearing. They also confirmed the email addresses of the parties to which the Decision and any Order shall be sent.

The landlord acknowledged service by the tenant of the Notice of Hearing and Application for Dispute Resolution.

*Preliminary Issue – Service by Landlord*

The tenant denied receipt of the landlord's evidence package.

The tenant stated they continued to live together after they moved out of the unit. They provided one Notice of Forwarding Address to the landlord for both tenants.

In April 2022, the tenant testified they moved again and did not provide a new forwarding address to the landlord.

The landlord testified she sent her evidence twice by registered mail to the address the tenant provided in their Notice of Forwarding Address.

The landlord testified the first mailing was on December 13, 2021 and the landlord provided the tracking number. Deemed service under section 90 is 5 days after mailing, December 18, 2021. The envelope was returned unclaimed.

The second mailing was June 19, 2022 by registered mail to the address the tenant provided in their Notice of Forwarding Address. This envelope was also returned unclaimed. The landlord submitted a copy of the envelope addressed to the tenant at their Forwarding Address and containing the tracking number as well as date of mailing.

The tenant denied notification of any registered mail. They suggested a possible explanation was that their landlord removed the notification from their mail.

Section 90 of the Act sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

*Residential Policy Guideline 12. Service Provisions* provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision.

Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

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The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done.

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A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received...It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

In considering the evidence and testimony, I find the tenant has not rebutted the deemed receipt presumption. I find the tenant's testimony did not provide a plausible explanation for not receiving registered mail twice, except for the unconvincing speculation that the registered mail "may" have been taken by their landlord.

The tenant acknowledged that the address of the tenant to which the evidence was mailed, was correct for both registered mail.

Section 71(1) of the Act authorizes the RTB Director to make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Section 15 of *Residential Tenancy Policy Guideline #12. Service Provisions* explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

I accept the landlord's credible testimony as supported by evidence that she mailed the evidence twice to the tenant by registered mail as set out above.

Therefore, pursuant to my authority under section 71(1)(b) of the Act, and considering the evidence and testimony of the parties, I find that the tenant was sufficiently served with the evidence on December 18, 2021, 5 days after mailing.

#### *Preliminary Issue – Doubling*

I informed the parties of the provisions of section 38 of the Act which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

#### Issue(s) to be Decided

Is the tenant entitled to a doubling of the security deposit under section 38?

Is the tenant entitled to a monetary award and reimbursement of the filing fee?

#### Background and Evidence

The parties agreed as follows. The tenancy began August 30, 2021, for rent of \$1,500.00 with a security deposit of \$1,500.00 paid at the beginning. A copy of the tenancy agreement was submitted which contained different amounts of rent and the security deposit. Both parties confirmed their testimony was correct and the agreement was not accurate. The tenant stated each tenant paid \$750.00 as a security deposit for a total of \$1,500.00. The landlord acknowledged this was correct.

The tenant testified they gave the landlord one month's notice they were moving out on November 30, 2021. The landlord denied receiving any notice.

The parties agreed as follows. The tenant moved out November 30, 2021. The tenant provided a Notice of Forwarding Address to the landlord in the RTB form on December 6, 2021. The landlord acknowledged receipt that day.

The parties agreed the landlord has not returned the security deposit and the tenant has not authorized the landlord to retain the deposit.

The landlord explained that she kept the deposit because the tenant owed utilities and the landlord incurred cleaning and repair expenses for which she should be compensated. The landlord testified she has not brought an Application for Dispute Resolution to keep the security deposit.

No condition inspection was conducted on moving in or out. No reports were submitted.

The tenant requested a doubling of the security deposit less the amount of the return as follows:

ITEM	AMOUNT
Security deposit	\$1,500.00
Security deposit doubling	\$1,500.00
Reimbursement filing fee	\$100.00
<b>TOTAL REQUESTED</b>	<b>\$3,100.00</b>

The tenant requested reimbursement of the filing fee of \$100.00 for a total Monetary Order of **\$3,100.00**.

The landlord stated she was entitled to keep the security deposit for the reasons mentioned, which the tenant denied. The landlord requested the tenant's application be dismissed.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

#### *Security deposit*

Section 38 of the *Act* requires the landlord to either return the tenant's security 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 security deposit. 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 pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*.

I accept the tenant's evidence supported by a copy of the Notice of Forwarding Address that the tenant gave the landlord written notice of their forwarding address on December 6, 2021.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of doubling of the security deposit minus the amount returned by the tenant.

### *Filing Fee*

As the tenant is successful in the application, I award the tenant reimbursement of the filing fee under section 72.

### *Summary*

I award the tenant a Monetary Order for the doubling of the security deposit for a total of **\$3,000.00.**

As the tenant has been successful in this matter the tenant is entitled to an award of \$100.00 for reimbursement of the filing fee. The total Monetary Order is **\$3,100.00**.

Conclusion

I grant the tenant a Monetary Order in the amount of **\$3,100.00** as described above.

This Monetary Order must be served on the landlord. If the landlord fails to comply with this Monetary Order, the tenant may file and enforce the Order in the Courts of BC.

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: September 13, 2022

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Residential Tenancy Branch