



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security and pet deposits pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that she served the landlord with the Notice of Hearing and Application and documentary evidence for Dispute Resolution by registered mail, February 17, 2022. The tenant had provided tracking information from Canada Post. The tenant testified that the package was returned unclaimed. Pursuant to sections 89 and 90 of the Act, the landlord is deemed to have been served five days later February 22, 2022.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security and pet deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on November 27, 2021 and ended on December 31, 2021. The tenant was obligated to pay \$900.00 per month in

rent in advance and at the outset of the tenancy the tenant paid a \$450.00 security deposit and a \$450.00 pet deposit. The tenant testified that she provided her forwarding address by text message to the landlord, but the landlord did not respond or acknowledge the text.

### Analysis

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

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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,**

### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

- (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service provided for in the regulations.

The tenant advised that she sent her forwarding address by text message. Text messaging is not one of the acceptable means of providing a forwarding address as noted above. In addition, there is insufficient evidence that the landlord received the text message. In the result, I find that the tenant is premature in her application as she has not properly served the landlord her forwarding address as required, accordingly; I dismiss the tenants request for the return of double the deposits with leave to reapply.

### Conclusion

The tenants request for the recovery of the filing fee is dismissed in its entirety without leave to reapply. The remainder of the tenant's application is dismissed with leave to reapply.

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 15, 2022

---

Residential Tenancy Branch