



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNETC, 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 tenants applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38;
- a monetary order in the amount of the monthly rent payable under the tenancy agreement, pursuant to section 51(1); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant ML (the tenant), landlord GH (the landlord) and SJ attended the hearing. The tenant represented tenant TL. 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 all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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."

### Preliminary Issue – exclusion of SJ

SJ corrected the spelling of his name. SJ's correct name is recorded on the cover page of this decision.

At the outset of the hearing the parties agreed that SJ sold the rental unit to the landlord and the completion and possession were on May 20, 2021. The landlord received the deposit from SJ.

The tenant affirmed he moved out on June 01, 2021 and left the rental unit's keys in the mailbox on June 03, 2021.

The landlord stated she found the rental unit's key in the mailbox on June 6, 2021.

Section 90(d) of the Act states that a document left in a mailbox is deemed served on the third day after it was left in the mailbox.

Section 44(1)(d) of the Act states the tenancy ends on the day the tenant vacates or abandons the rental unit.

I accept the landlord's uncontested testimony that she received the rental unit's keys on June 06, 2021. I find the tenancy ended on June 06, 2021, per section 44(1)(d) of the Act, as the landlord only received the keys on that day.

The Act defines landlord as:

the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,  
(i)permits occupation of the rental unit under a tenancy agreement, or  
(ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I accepted the uncontested testimony that the landlord purchased the rental unit on May 20, 2021. Thus, SJ is not responsible for the monetary claims related to the rental unit, as he was not the landlord when the tenancy ended.

SJ requested to be excluded from this application.

As this dispute is regarding a tenancy between the tenant and the landlord, I exercise my authority under section 64(3)(c) of the Act to amend the application to exclude the SJ as a respondent to this application.

#### Preliminary Issue – Service

The tenant served the notice of hearing and the evidence (the materials) via registered mail on March 13, 2022 to the landlord. The tenant mailed the materials to the rental unit's address. The tracking number is recorded on the cover page of this decision.

The landlord affirmed she did not receive the materials. The landlord received an email from the Residential Tenancy Branch (RTB) and learned about this application. The

landlord confirmed she occupied the rental unit until March 31, 2022. The landlord's address for service since April 01, 2022 is recorded on the cover page of this decision.

Both parties agreed that SJ served and the tenant received a 2 month notice to end tenancy for landlord's use (the Notice) on May 01, 2021. A copy of the Notice dated May 01, 2021 was submitted into evidence. It indicates the landlord purchased and will occupy the rental unit. The effective date was July 01, 2021. The Notice indicates the landlord's address for service.

The tenant confirmed receipt of the landlord's response evidence and that he had enough time to review it.

RTB Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

Based on the Notice and the landlord's testimony, I find the landlord's address for service was the rental unit's address from July 01, 2021 to March 31, 2022.

Based on the tenant's convincing testimony and the tracking number, I find the tenant served the materials to the landlord on March 13, 2022 in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on March 18, 2022, in accordance with section 90 (a) of the Act.

### Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the deposit?
2. a monetary order under section 51(1) of the Act?
3. 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 tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed that monthly rent of \$3,200.00 was due on the first day of the month. The landlord collected and holds in trust a deposit in the amount of \$1,600.00. The tenancy agreement was submitted into evidence. It states the tenancy started on February 01, 2020 and was for a fixed-term until January 31, 2021.

Both parties agreed the tenants paid rent due on May 01, 2022 and did not pay rent on June 01, 2022.

The tenant served his forwarding address to the landlord via registered mail on June 15, 2021 to the rental unit's address. The tracking number is recorded on the cover page of this decision. The tenant submitted a copy of the envelope with the tracking number, a stamp from Canada Post indicating it was mailed on June 15, 2021, the sender was the tenant and that the letter was addressed to the landlord at the rental unit's address. The letter also indicates the tenant's address is the SA address (recorded on the cover page).

The landlord does not recall if she received the tenant's forwarding address. The landlord only moved into the rental unit on July 01, 2021 and did not check the rental unit's mailbox from June 06 to 31, 2021, as she was living in another city.

The tenant did not authorize the landlord to retain the deposit.

The landlord testified the tenant's wife verbally authorized her to retain the deposit. The tenant said his wife did not authorize the landlord to retain the deposit.

The tenant is seeking the return of double the deposit and compensation in the amount of one month's rent payable under the tenancy agreement, per section 51(1) of the Act.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Security deposit

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.

(emphasis added)

The tenant sent a letter with his forwarding address to the landlord at the rental unit's address on June 15, 2021. Per section 90(a) of the Act, the June 15 letter is deemed served on June 20, 2021. The Notice's effective date was July 01, 2021.

I find the tenant did not serve the forwarding address in accordance with section 38(1) on June 15, 2021, as the landlord's address for service was not the rental unit's address until July 01, 2021. The Notice indicates the landlord's address prior to July 01, 2021.

I deemed the landlord received the notice of hearing on March 18, 2022. The notice of hearing indicates the tenant's address for service is the SA address. As the notice of

hearing contains the tenant's address for service, I deem the landlord was served the forwarding address in writing on March 18, 2022.

Section 38(4) of the Act states:

(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,  
(a)at the end of a tenancy, **the tenant agrees in writing** the landlord may retain the amount to pay a liability or obligation of the tenant

(emphasis added)

I accept the landlord's testimony that the tenant did not authorize the tenant to retain the deposit in writing, as required by section 38(4)(a) of the Act.

RTB Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

[...]

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

[...]

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;

As stated above (topic "Preliminary Issue – exclusion of SJ"), the tenancy ended on June 06, 2021. The landlord is deemed served the forwarding address in writing on March 18, 2022 and did not obtain an authorization in writing from the tenants to retain

the deposit. The landlord did not submit an application for an authorization to retain the deposit.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to double the deposit in the amount of \$3,200.00.

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

#### One month's rent

Sections 49(2) and (5) of the Act states the landlord may end a tenancy by serving a two month notice to end tenancy:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I accept the uncontested testimony that SJ served and the tenants received the Notice on May 01, 2021.

I find the tenancy was for a fixed-term from February 01, 2020 to January 31, 2021 and continued as a periodic tenancy, per section 44(3) of the Act:

If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 50 of the Act states:

**(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [director's orders: renovations or repairs], the tenant may end the tenancy early by (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.**  
**(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.**  
(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

(emphasis added)

Section 51(1) of the Act provides that:

A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Residential Tenancy Branch Policy Guideline 50 states:

Section 51(1) of the RTA requires a landlord who gives a notice to end a tenancy for landlord's use under section 49 to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a valid notice to end tenancy for landlord's use is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[...]

A tenant who is entitled to receive one month's rent under these sections may instead withhold that amount from the last month's rent. If the tenant ends the



tenancy earlier in these circumstances, as permitted by section 50 of the RTA, and before withholding the last month's rent, the landlord must refund that amount.

I accept the uncontested testimony that the tenants paid rent due on May 01, 2021 and did not pay rent due on June 01, 2021.

As stated above (topic "Preliminary Issue – exclusion of SJ"), the tenancy ended on June 06, 2021.

The parties did not raise issues about service of the tenant's notice to end tenancy under section 50(1)(a) of the Act to end the periodic tenancy.

Per sections 51(1) and 50(2) of the Act, the tenants are entitled to one month's rent. As the tenants paid rent in full on May 01, 2021 for the period of May 01 to 31, 2021, the tenant are entitled to receive from the landlord an amount that is equivalent to one month's rent. As the tenancy ended on June 06, 2021 and the tenants did not pay rent on June 01, 2021, the tenants are entitled to \$2,559.84 ( $\$3,200.00 / 30 \text{ days} = 106.66 \times 24 \text{ days}$ ).

Thus, I award the tenants the amount of 2,559.84.

As the tenants' application is successful, I award the tenants the return of the \$100.00 filing fee, per section 72(1) of the Act.

In summary, the tenants are entitled to:

Item	Amount \$
Deposit	3,200.00
Section 51(1)	2,559.84
Filing fee	100.00
<b>Total:</b>	<b>5,859.84</b>

### Conclusion

Pursuant to sections 38, 51(1) and 72 of the Act, I grant the tenants a monetary order in the amount of \$5,859.84.

The tenants are provided with this order in the above terms and the landlord must be served with this order. 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: October 25, 2022

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Residential Tenancy Branch