



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit.

The tenant appeared along with two others who were present when the landlord showed the rental unit to them.

There was no appearance on part of the landlord and I proceeded to explore service of the hearing documents upon the landlord.

The tenant testified that he sent the proceeding package to the landlord via email on June 27, 2022 and by registered mail sent on June 29, 2022. The tenant explained he got the landlord's email address when the landlord gave it to him for purposes of e-transferring the security deposit to him. The tenant provided a copy of the registered mail receipt, including tracking number, as proof of service. As for the address used to send the registered mail, the tenant stated that he used the rental unit address as this was the only address provided to him by the landlord and it is where the landlord met him to show him the unit. A search of the registered mail tracking number showed the registered mail was successfully delivered, with a signature, on June 30, 2022.

Section 89(1) provides for the ways a monetary claim is to be served upon the respondent. Where a tenant is using registered mail, the address to use is the place at which the landlord carries on business as a landlord. In this case, the landlord met the tenant at the rental unit and the only address the landlord provided to the tenant was the rental unit address. As such, I find the rental unit address is the address at which the landlord was carrying on business as a landlord and I find the landlord to be duly served with notification of this proceeding.

In light of the above, I proceeded to hear from the tenant without the landlord present.

I noted there were seven co-tenants named on this application and I questioned whether the landlord had entered into an agreement with all seven co-tenants. The lead tenant, referred to by initials AS, who was before me stated he had been the tenant in negotiations with the landlord and he had paid the security deposit to the landlord. As such, I was satisfied that AS had standing as a tenant. AS stated that the application may be amended to remove the names of the other six co-tenants. I amended the application accordingly.

#### Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Recovery of the filing fee.

#### Background and Evidence

The tenant testified that he saw the landlord's advertisement for the rental unit online on April 28, 2022. The tenant messaged the landlord and on May 2, 2022 the parties reached an agreement for the tenant to rent the unit at the rental rate of \$3700.00 plus utilities.

The landlord requested a security deposit of \$3700.00 but the tenant responded that security deposits are usually 50% of the monthly rent and the tenant sent the landlord \$1850.00 via e-transfer on May 2, 2022. The landlord accepted the e-transfer.

On May 6, 2022 the landlord met the tenant and the other intended occupants of the rental unit at the rental unit. During that time, the landlord informed the tenant that the rent would \$600.00 more, or \$4200.00 per month. The tenant was not agreeable to the increase in rent payable.

On May 11, 2022 the tenant started requesting the landlord return the security deposit, the landlord responded that he would be keeping it and then the landlord stopped responding to the tenant's messages.

On May 14, 2022 the tenant sent a letter to the landlord, via registered mail, providing the landlord with his forwarding address. The tenant orally provided me with the registered mail tracking number and a search of the registered mail tracking number

shows that it was successfully delivered on May 17, 2022. The tenant sent the registered mail to the landlord at the rental unit address.

The tenant has not received any part of the security deposit and the landlord did not file an Application for Dispute Resolution to make a claim against the tenant's security deposit. Nor, did the tenant give the landlord consent to keep the security deposit.

Evidence provided by the tenant for my review included the online and text messages exchanged between the tenant and the landlord; an image showing the tenant sent the landlord \$1850.00 for a security deposit via e-transfer on May 2, 2022; and, the letter sent to the landlord providing the tenant's forwarding address.

### Analysis

The *Residential Tenancy Act* applies to rental units, residential property and tenancy agreements between a landlord and a tenant. Section 1 of the Act defines a "tenancy agreement" to include agreements entered into orally, expressly or implicitly.

In this case, I accept the undisputed evidence before me that the tenant paid the landlord \$1850.00 for a security deposit, via e-transfer.

Under section 17 of the Act, a landlord may not accept a security deposit until a tenancy agreement forms. Section 19 of the Act provides that a landlord may not require or accept a security deposit that exceeds 50% of the month rent. Also, a landlord may not require or accept a deposit from a tenant other than a security deposit, pet damage deposit or key deposit, and the landlord cannot consider the deposit non-refundable or provide for automatic forfeiture of a deposit.

Although there was no written tenancy agreement signed by the parties, the parties had agreed to some basic tenancy terms by way of their online exchanges and the landlord accepted a security deposit. As such, I find a tenancy formed when the landlord accepted the deposit on May 2, 2022.

Once a tenancy forms, section 16 of the Act provides that both parties are bound to fulfill the agreement and are subject to the Residential Tenancy Act, even if the tenant never takes possession of the rental unit. Accordingly, I find the landlord was bound to administer the security deposit in accordance with section 38 of the Act.

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The tenant provided evidence that shows he provided the landlord with a forwarding address in writing via registered mail that was sent on May 14, 2022 and delivered on May 17, 2022. As such, I find the landlord had 15 days from May 17, 2022 to either: refund the security deposit to the tenant; make an Application for Dispute Resolution to claim against the tenant's security deposit; or, get the tenant's written consent to retain the security deposit.

Since the landlord did none of these things, I find the landlord violated section 38(1) of the Act and must now pay the tenant double the security deposit pursuant to section 38(6) of the Act. Therefore, I grant the tenant's request for an award of \$3700.00.

I further award the tenant recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

In keeping with all of the above, I provide the tenant with a Monetary Order in the total amount of \$3800.00 to serve and enforce against the landlord.

### Conclusion

The tenant is provided a Monetary Order in the sum of \$3800.00 to serve and enforce upon the landlord.

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: February 28, 2023

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Residential Tenancy Branch