



# 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 was convened as a result of the Tenant's Application for Dispute Resolution, made on December 23, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on March 6, 2023 as a teleconference hearing. Only the Tenant and the Tenant's representative appeared at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant, their representative, and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served to the Landlord by registered mail on February 5, 2023. The Tenant's representative stated that they were not sure if the Respondent's instructions page had been included in the package, therefore, the Tenant re-served the Landlord with a complete package on February 7, 2023. A copy of the Canada Post registered mail receipts were submitted in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the complete Application and documentary evidence on February 13, 2023, the fifth day after their registered mailing of the complete package. The Landlord did not submit any documentary evidence in response to the Application.

The Tenant and their representative were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security/pet deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The Tenant testified that the tenancy began on September 23, 2022, and ended on October 5, 2022. During the tenancy, rent was due in the amount of \$1,400.00 per month. The Tenant testified that they paid a security deposit of \$700.00 and a pet deposit in the amount of \$300.00 to the Landlord.

The Tenant testified that they vacated the rental unit on October 5, 2022, and the Landlord has not yet returned their security and pet damage deposit totalling \$1,000.00. The Tenant stated that they provided their forwarding address to the Landlord as part of the dispute resolution package containing the Tenant's Application which was sent via registered mail on February 5 and 7, 2023.

### Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, 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;

The Tenant testified that the forwarding address was served to the Landlord by registered mail as part of the Notice of Hearing package on February 5 and 7, 2023.

According to the Residential Tenancy Branch Practice Directive (the "Practice Directive"); A forwarding address provided by the Tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

In light of the above, I find that the Tenant did not adequately serve the Landlord with her forwarding address in writing in accordance with Section 38(1) of the *Act*. Therefore, I dismiss the Tenant's Application with leave to reapply. The Tenant is required to provide the Landlord with their forwarding address in writing. It is suggested that this be done by Canada Post registered mail. Once received, the Landlord has 15 days to either return the Tenant's deposits or apply to keep them. If not, the Tenant is entitled to reapply for the doubling of their deposits.

Section 39 of the *Act* establishes that it is the Tenant's obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlord may keep the Deposits and the Tenant's right to the Deposits is extinguished.

As the Tenant was not successful with their Application, I also dismiss the Tenant's Application for the return of the filing fee.

### Conclusion

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: March 06, 2023

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Residential Tenancy Branch