



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- return of the Tenant's security deposit and/or pet damage deposit in the amount of \$1,700.00 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 1:57 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

### Preliminary Matter – Service of Dispute Resolution Documents

The Tenant confirmed that the notice of dispute resolution proceeding package (the "NDRP Package") was sent to the Landlord via registered mail on August 19, 2022. The Tenant submitted a tracking number in support of service (referenced on the cover page of this decision). Tracking records indicate that the package was available for pickup from August 23, 2022 until September 8, 2022, when it was returned as unclaimed. The Tenant testified that she had sent the NDRP Package to the rental property address, which was the Landlord's address for service stated on the parties' tenancy agreement.

The Tenant testified that she had sent emails to the Landlord about this matter which were also ignored.

Based on the Tenant's evidence, I find the Landlord was served with the NDRP Package in accordance with section 89(1)(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the NDRP Package on the fifth day after mailing, or August 24, 2023. I note that according to Residential Tenancy Policy Guideline 12. Service Provisions, where a document served by registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Tenant testified that on April 9, 2023, she served a copy of her documentary evidence in person on WM, a tenant who resides in the upper suite of the rental property. The Tenant testified that the upper tenants had always been in charge of collecting mail for the Landlord. The Tenant submitted a signed statement from WM dated April 9, 2023, which confirms receipt of the documents on behalf of the Landlord. Based on this evidence, I find the Landlord was served with a copy of the Tenant's evidence in accordance with section 88(b) of the Act.

Having found the Landlord to be deemed served with notice of this hearing, I directed this hearing to proceed in the Landlord's absence.

#### Issues to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is the Tenant entitled to reimbursement of the filing fee?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on June 1, 2018 and ended on August 31, 2020. Rent was \$1,250.00 per month at the time that the tenancy ended. The Tenant paid a security deposit of \$850.00.

The Tenant had made a prior application regarding the security deposit which had been dismissed with leave to re-apply (see file number referenced on the cover page of this decision). The Tenant submitted this application on July 22, 2022.

The Tenant testified that there were no move-in or move inspections and the parties did not complete any condition inspection reports.

The Tenant testified that she sent a letter dated March 20, 2021 with her forwarding address (the "Forwarding Address Letter") to the Landlord via regular mail on March 20, 2021. The Tenant submitted a copy of the Forwarding Address Letter into evidence.

The Tenant testified that the parties normally communicated via email, and that she had sent the Landlord several emails about this matter before making the application. The Tenant testified that the Landlord did not reply to her emails requesting the return of her deposit. The Tenant submitted a copy of email correspondence from September 2020 to February 2021 into evidence. The Tenant testified that she had texted the Landlord as well, but received no response. The Tenant stated that she called the Landlord to make sure it was the right number and heard the same greeting message from 2018.

The Tenant testified that she sent a second and final letter to the Landlord dated June 6, 2021 via regular mail. The Tenant also submitted a copy of this letter into evidence. This letter re-stated the Tenant's forwarding address, described the Tenant's previous efforts to reach the Landlord, and advised that the Tenant was intending to launch a tenancy dispute.

The Tenant confirmed that she did not receive any response or return of any portion of the security deposit from the Landlord.

### Analysis

#### *1. Is the Tenant entitled to the return of the security deposit?*

According to sections 38(1), (3), and (4) of the Act, a landlord must repay a security deposit to the tenant with interest or make an application for dispute resolution claiming against the deposit within 15 days after the later of the tenancy end date or the date the landlord receives the tenant's forwarding address in writing, unless the landlord has the tenant's written consent or a previous order from the Residential Tenancy Branch.

In this case, I accept the Tenant's undisputed testimony that the tenancy ended on August 31, 2020.

Based on the Tenant's undisputed testimony and evidence, I find the Tenant served the Landlord with her Forwarding Address Letter via ordinary mail on March 20, 2021, in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Forwarding Address Letter on March 25, 2021, the fifth day after mailing. I find the Landlord to be deemed served with the Tenant's forwarding address in writing as of that date.

Pursuant to section 38(1) of the Act, I find the Landlord had until April 9, 2021, or fifteen days after being served with the Tenant's forwarding address in writing, to return the security deposit to the Tenant in full or make an application for dispute resolution to claim against the deposit. I find the Tenant did not agree for the Landlord to keep the security deposit. I find there is insufficient evidence of any previous orders made by the Residential Tenancy Branch regarding any compensation owed to the Landlord by the Tenant or authorization for the Landlord to keep the security deposit. I find the Landlord did not return the security deposit in full to the Tenant or make an application by April 9, 2021 as required under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the security deposit.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order a return of a security deposit unless the tenant's right to the return of the security deposit has been extinguished under the Act. I find the Tenant was not provided with two opportunities by the Landlord for move-in or move-out inspections in accordance with the Act and the regulations. For reference, section 17 of the regulations requires that the second or final opportunity for inspection be given to a tenant using the approved (Residential Tenancy Branch) form. I find there is insufficient evidence to suggest that the Landlord had complied with such requirements so that the Tenant's right to the security deposit would have been extinguished due to non-attendance of a move-in or move-out inspection. Furthermore, I find the Landlord was deemed served with the Tenant's forwarding address in writing by March 25, 2022, which was within one year after the tenancy ended. Therefore, I conclude the Tenant's right to the return of the security deposit was not extinguished under any of sections 24(1), 36(1), or 39 of the Act.

I conclude the Tenant is entitled to a return of double the security deposit under sections 38(1) and 38(6) of the Act.

In addition, section 38(1) of the Act requires that interest on the security deposit be paid to a tenant. The interest rate on deposits was 0% from 2018 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original security deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$5.59 of interest on the security deposit from the beginning of the tenancy to the date of this decision, calculated as follows:

2018 \$850.00: \$0.00 interest owing (0% rate for 58.62% of year)  
 2019 \$850.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2020 \$850.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2021 \$850.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2022 \$850.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2023 \$850.00: \$5.59 interest owing (1.95% rate for 33.69% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$1,705.59 (or  $\$850.00 \times 2 + \$5.59$ ) for the return of double the security deposit plus interest.

## *2. Is the Tenant entitled to reimbursement of the filing fee?*

The Tenant has been successful in this application. I award the Tenant reimbursement of her filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Return of Double the Security Deposit ( $\$850.00 \times 2$ )	\$1,700.00
Interest on Security Deposit	\$5.59
Filing Fee	\$100.00
<b>Total Monetary Order for Tenant</b>	<b>\$1,805.59</b>

## Conclusion

The Tenant's claims for return of the security deposit and reimbursement of the filing fee are successful.

Pursuant to sections 38 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,805.59**. This Order may be served on the Landlord, 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: May 03, 2023

---

Residential Tenancy Branch