



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

On August 22, 2022, the Tenant made an Application for a Dispute Resolution Proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 19-minute teleconference.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:49 PM. Only the Applicant dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only other person who had called into this teleconference.

At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, the Tenant provided a solemn affirmation.

She advised that she served the Notice of Hearing package to the Landlord by registered mail on October 15, 2022 (the registered mail tracking number is noted on the first page of this Decision). She testified that this package was not returned to her; however, the tracking history appears to indicate that this package was returned to sender.

Regardless, based on the Tenant's solemnly affirmed testimony and the undisputed evidence before me, I am satisfied that the Landlord was deemed to have received this package five days after it was mailed.

The Tenant then advised that she served her evidence to the Landlord by placing it in his mailbox on February 20, 2023. Based on this solemnly affirmed testimony, I am satisfied that this evidence was deemed received three days after it was put in the mailbox. As this evidence was served in accordance with the timeframe requirements of Rule 3.14. of the Rules of Procedure, the Tenant's evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a return of double her security deposit?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy commenced on February 1, 2022, and that the tenancy ended on May 31, 2022, when she gave up vacant possession of the rental unit. She stated that the Landlord lived downstairs in a self-contained suite and that he

never shared a kitchen or bathroom with her. Rent was established at an amount of \$950.00 per month and was due on the first day of each month. A security deposit of \$450.00 was also paid. While a pet damage deposit of \$25.00 was indicated as paid on the tenancy agreement, she testified that she never paid this. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant testified that she provided her forwarding address in writing to the Landlord by completing the *Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit* form, and attached it to the Landlord's door on July 24, 2022. She submitted a signed proof of service form to corroborate service.

She advised that the Landlord never returned any of the security deposit, that he never filed to claim against it, and that he never had any written authorization to keep any of it. As such, as per Section 38 of the *Act*, she is requesting that double the security deposit be awarded.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the totality of the evidence before me, I am satisfied that the Tenant provided her forwarding address in writing to the Landlord on July 24, 2022, and that it was deemed received on July 27, 2022. As such, the Landlord was required to return the deposit in full or claim against it within 15 days of this date. As the Landlord did not do either, I am satisfied that the Landlord failed to comply with the *Act*, and the doubling provisions apply to the security deposit. Therefore, I grant the Tenant a monetary award in the amount of  $\$450.00 \times 2 = \mathbf{\$900.00}$ .

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Doubling of the security deposit	\$900.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,000.00</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,000.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. 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: June 22, 2023

---

Residential Tenancy Branch