



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on August 30, 2022, seeking an Order granting a refund of the security deposit from their prior tenancy. They also seek recovery of the Application filing fee.

This participatory hearing was scheduled after an adjudicator in this office evaluated the Tenant's Application and found insufficient proof of the Landlord's address for service, and the security deposit amount. This generated a Notice of Dispute Resolution Proceeding for a participatory hearing. The hearing commenced on June 29, 2023, and reconvened on August 4, 2023.

### Preliminary Issue – Tenant's Notice of Dispute Resolution Proceeding to the Landlord

The Landlord attended the hearing on June 29. The Landlord stated they did not receive the Notice of Dispute Resolution Proceeding, nor the Tenant's evidence, in this matter. The Landlord asked for an adjournment, after drawing the distinction between the address they provided on the previous end-of-tenancy notice they served to the Tenant, and the rural post-office-box address they regularly use.

I adjourned the hearing to ensure the Landlord received the Tenant's evidence in full in this matter. I also afforded the Landlord the opportunity to provide their own relevant evidence in this matter. I set a strict guideline for each participant's service of their evidence to the other via email. I verified the email address for each participant in the hearing.

I find the Landlord received the Tenant's evidence in full, having established the Landlord's email address as valid in the June 29 hearing. For this reason, I give the Tenant's evidence full consideration where needed in this decision.

Preliminary Matter – Landlord’s attendance in the reconvened hearing

The Landlord did not attend the reconvened hearing on August 4, 2023. A relation of theirs attended and asked for a further adjournment because of the Landlord’s attendance in a different legal proceeding at that time. The Tenant objected to a further adjournment in this matter.

I find the Tenant would be prejudiced by a further adjournment in this matter. The Landlord had sufficient time to prepare for this reconvened hearing that was scheduled 36 days after the original hearing date. The Landlord had time to prepare a representative or a written submission in this matter, even the person who attended on the Landlord’s behalf.

I find the circumstances do not warrant a further adjournment of this hearing. I find the need for an adjournment, as requested by the Landlord’s representative in the reconvened hearing, is from the neglect of the Landlord in not fully preparing for this reconvened hearing, including its scheduling. There was no record provided of the need for the Landlord’s attendance in a different forum, even though the Landlord was aware of the process for providing evidence in this matter via the upload portal. As well, the party who attended the reconvened hearing on the Landlord’s behalf stated they did provide this proof; however, they did not. The prejudice to the Tenant, in seeking to have this matter resolved, outweighs the Landlord’s need for an adjournment, which I find was based on their own neglect.

As well, the Landlord provided material that was related to damage in the rental unit. I find the Landlord was, more likely than not, going to make a case for some entitlement to compensation for damage in the rental unit. The Landlord did not file a separate application for that purpose and cannot at this stage introduce a claim for compensation. I set out this point in more detail below, with reference to the *Act*. I find there was no need for the Landlord to be heard on the need for compensation, and that would further prejudice the Tenant in this matter.

In summary, I grant no further adjournment in this matter to the Landlord.

Issues to be Decided

Is the Tenant entitled to the return of the security deposit, as per s. 38 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant on their Application set out the security deposit was \$1,500. On the 'Direct Request Worksheet' document the Tenant completed and signed on August 29, 2022, the Tenant provided the amount of \$1,500. The tenancy agreement shows the amount of \$2,000 for the security deposit.

Prior to the reconvened hearing, the Tenant provided a document consisting of emails between the Tenant and the Landlord, showing that the Landlord "negotiated that agreement and edited the original, prior to signing it."

The tenancy ended when the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause (the "One-Month Notice"), signed and dated on June 30, 2022. This purportedly was for the Tenant's continued late payment of rent, as indicated with dates on page 2 of that document. The Landlord provided the end-of-tenancy date of July 1, 2022. In a separate email with the One-Month Notice attached, the Landlord stated the Tenant must "remove yourselves from [rental unit address] rental by 12 am June 30<sup>th</sup>".

On the One-Month Notice, the Landlord provided a street address. This was not a post-office-box number. In the initial hearing in this matter, the Landlord drew the distinction, with the rural area of their address requiring use of the PO Box number. The Landlord stated that the post office/delivery service would not process delivery to a street address, as opposed to a PO Box number, as required.

The Tenant provided a record of their discussion with the Landlord, dated August 4, 2022. They requested the Landlord's return of the security deposit, via etransfer, to an email address they provided in that message. The Landlord responded on August 7 to say they "have every intention in dealing with the damage deposit matter, although we will not be attending the residence until the end of august, at which point we will be in contact."

The Tenant responded on August 17 to state "You must return the security deposit not longer than two weeks after receiving the Tenant's Notice of Forwarding Address for The Return of Security Deposit" which they sent through registered mail on July 30, as stated in the email response. The Tenant noted they sent that document to "the

address for service indicated in the RTB form you have sent me when requesting the end of tenancy.”

In their evidence, the Tenant included a copy of this form, signed by the Tenant on July 30, 2022. This provided the Tenant’s forwarding address. They sent this to the Landlord via registered mail, as indicated on that form. This document also sets out the Landlord’s address, matching what is set out on the One-Month Notice.

The Tenant provided a ‘Proof of Service’ document to set out precisely how they served the form to the Landlord. This was via registered mail on 30 July 2022 to the address listed on the One-Month Notice. The Tenant also sent the document via email to the Landlord “and the landlord’s partner” on July 30 (the move-out date), and August 4, 2022.

The Tenant provided a copy of the registered mail receipt from the post office they used, dated July 30, 2022. This provides a nine-digit tracking number.

The Tenant in the interim period after the initial hearing and the reconvened hearing obtained a record from Canada Post, listing the same tracking number, showing a delivery date of August 26, 2022. This reproduces the addressee’s name, as “Signatory Name”, and shows a reproduction of their signature.

Another document from Canada Post, provided by the Tenant in their evidence dated July 13, 2023, lists the same tracking number, and provides the scanned signature of the recipient, *i.e.*, the Landlord, stating “signed by” and showing the Landlord’s name from the date of August 26, 2022.

The Tenant, prior to the reconvened hearing, provided an email to the Landlord on July 20, 2023 showing that they sent a copy of this Canada Post delivery confirmation.

The Tenant in the hearing, and in their Application, was clear that they did not receive any amount of the deposit returned to them.

In the initial hearing, the Landlord presented that there was damage in the rental unit. They also maintained that they did not receive the Tenant’s forwarding address because of the Tenant’s use of the street address instead of the PO Box number. In the interim period, the Landlord provided a series of images depicting damage in the rental unit.

## Analysis

I find the Tenant was specific in giving the amount of \$1,500 as the amount of the security deposit. This was as indicated on their Application for Dispute Resolution, as well as on the Direct Request Worksheet they prepared. I find the security deposit amount in question was \$1,500.

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date a landlord receives a tenant's forwarding address in writing, a landlord must repay any security or pet damage deposit to a tenant, or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay a tenant double the amount of the security and/or pet damage deposit.

From the evidence I find as fact that the Tenant provided their forwarding address to the Landlord on July 30, 2022. They sent this to the Landlord via registered mail. I find as fact that the Landlord received this – at the address the Landlord provided on the One-Month Notice – on August 26, 2022. The Landlord stated registered mail would not reach them without use of a PO Box; however, I find this is not true, as shown in the Tenant's evidence of completed delivery to the address they used, with a signature from the Landlord when they received that mail on August 26, 2022.

The Landlord in prior communication stated they were intending to deal with the matter of the deposit toward the end of August 2022. I find as fact the Landlord did not return the deposit to the Tenant as required, nor make a claim against the deposit at the Residential Tenancy Branch within 15 days of receiving the Tenant's forwarding address on August 26, 2022.

The Landlord retaining the security deposit is not in line with the provisions of the *Act*. The Landlord was bound by the provisions of s. 38(1). Though the Landlord raised issues of damage in the rental unit, the Landlord has in effect forfeited their opportunity to apply for anything to do with the security deposit at this late stage.

I find s. 38(6) applies in this situation, and the Landlord must pay the Tenant double the security deposit amount of \$1,500. The total is \$3,000 owing from the Landlord to the Tenant.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100.00 filing fee they paid for this application.

Conclusion

I order the Landlord to pay the Tenant the amount of \$3,100. I grant the Tenant a Monetary Order for this amount. If necessary, the Tenant may file this Monetary Order in the Provincial Court (Small Claims), where it will be 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 s. 9.1(1) of the *Act*.

Dated: August 9, 2023

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Residential Tenancy Branch