



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OHM PROPERTY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of the security deposit or pet damage deposit, and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, and the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on January 1, 2018 and reverted to a month-to-month tenancy after December 31, 2018. The tenant moved out on or about October 27, 2022. Rent in the amount of \$2,500.00 was originally payable on the 1<sup>st</sup> day of each month which was raised during the tenancy to \$2,537.50 and there are no rental arrears. At the outset of the tenancy the tenant paid to the landlord a security deposit in the amount of \$1,250.00, and no pet damage deposit was paid. The rental unit is the upper level of a house, and a separate tenancy existed in the lower level. A copy of the tenancy agreement has been provided for this hearing.

The landlord gave the tenant a notice to end the tenancy about a leak in the rental unit. A hearing was scheduled, and the tenant thought she would have to move out and wait for the hearing, and perhaps move back in.

The landlord had made an Application for Dispute Resolution for a monetary order and to keep the security deposit. Prior to the hearing, the landlord cancelled the hearing, and according to the landlord's evidentiary material the landlord decided to sell the house, which sold on February 28, 2023. The hearing was cancelled by the landlord on August 17, 2022.

The parties participated in a move-out condition inspection and report, a copy of which has also been provided for this hearing. It contains the tenant's forwarding address and signature dated October 29, 2022. The landlord's agent told the tenant that the tenant should sign it by DOCUSIGN, which the tenant did and returned it to the landlord's agent with the forwarding address.

**The landlord's agent** testified that a previous Arbitrator said that the landlord doesn't have an active RTB-51 to establish that the parties could communicate by email. Without that form signed, email or electronic communication is not valid. DOCUSIGN is electronic, so when the address was put on that form, the landlord doesn't have a forwarding address. The landlord was instructed to get an RTB 47 form giving the tenant's forwarding address. The landlord's agent asked for it a few times, with the form attached in the email.

During the October 26, 2022 move-out condition inspection, the parties walked through the rental unit but it was not signed in person. The landlord asked that it be signed by DOCUSIGN, and the tenant did that. The landlord's agent does not know who signed it on behalf of the landlord. However, the tenant's forwarding address was on the form when it was received from the tenant.

The tenant indicated in text messaging that she was moving again and no longer living at the address she had provided. The landlord's agent wanted to get further clarification of the tenant's new address, and text messages have been provided for this hearing dated April 5, 2023.

The landlord's agent received the tenant's forwarding address on October 29, 2022, but technically didn't have it other than by DOCUSIGN.

### Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit and/or pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. It also states that if the tenant doesn't give the landlord a forwarding address in writing within 1 year after the tenancy ends, the landlord may keep the deposit(s) and the right of the tenant to the return of the deposit(s) is extinguished.

Firstly, since rent was payable on the 1<sup>st</sup> day of each month, I find that the tenancy ended on October 31, 2022. The parties agree that the landlord received the tenant's forwarding address in writing on the move-out condition inspection report, however it was signed by DOCUSIGN, which I accept is a digital signature, and returned to the landlord by email.

The *Act* also states:

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], 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;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j) by any other means of service provided for in the regulations.

The regulations state:

**43** (1) For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

An “email address provided as an address for service by the person” means that the person being served had agreed in writing to accept service of documents by email. In this case, there is no evidence that the landlord agreed in writing or provided an email address as an address for service. However, a landlord is required to provide a tenant with a copy of the move-out condition inspection report within 15 days of the date the inspection is completed. The landlord provided it to the tenant by email, asking the tenant to sign it by way of DOCUSIGN. The landlord must use a service method described in Section 88 of the *Act*, which also does not include email service without authorization from the tenant, but did not comply with that section of the regulations, and now seeks to keep the security deposit because the tenant gave a forwarding address in the same manner.

I alerted the parties during the hearing that I would review the previous application made by the landlord to ensure that I did not make any rulings that may already have been adjudicated upon. That hearing scheduled shows that the landlord made the application claiming damages and for an order permitting the landlord to keep the security deposit on November 10, 2022 and served the tenant by registered mail on November 25, 2022, after receiving the tenant’s forwarding address on the move-out

condition inspection report electronically on October 29, 2022. The landlord's application sets out the tenant's address, which is the address that the tenant provided on the move-out condition inspection report.

The Supreme Court of British Columbia has ruled that I must consider the totality of the case. The purpose of a tenant providing a forwarding address to a landlord is for the landlord to return the security deposit to the tenant or to serve the tenant with documents regarding damages or unpaid rent. To now find that the tenant has not provided a forwarding address in writing except electronically, after the landlord served the tenant with the move-out condition inspection report in that manner, and served a Notice of Dispute Resolution Proceeding by registered mail naming the forwarding address, is in my opinion, too late, and defies all logic.

In the circumstances, I find that the landlord has not complied with the law by providing the tenant with the move-out condition inspection report in accordance with the regulations, and used the tenant's forwarding address to serve a document that has special rules for service. The landlord has also provided evidence of having served the tenant at the forwarding address with the landlord's evidentiary material.

I find that the landlord had 15 days from the date that the landlord cancelled the hearing and withdrew the application on August 17, 2022 to return the security deposit to the tenant.

I find that the landlord breached the regulations first, asked for the forwarding address and signature of the tenant on the move-out condition inspection report, by DOCUSIGN and sent by email.

The tenant is entitled to double the recovery of the security deposit, or \$2,500.00.

Since the tenant has been successful with the application, the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$2,600.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,600.00.

This order is final and binding and may be enforced.

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: January 30, 2024

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Residential Tenancy Branch