



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on March 21, 2016. The Tenant filed seeking a monetary order for the return of double their security and pet deposits.

The hearing was conducted via teleconference and was attended by the Tenant and her Advocate. No one was in attendance on behalf of the Landlord. The Tenant testified the Landlord were served copies of the application for Dispute Resolution, notice of hearing documents, and their evidence, via registered mail on March 23, 2016. The Tenant submitted evidence that the Landlord failed to pick up the registered mail and the package has since been returned to the Tenant.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed evidence of the Tenant, I find the Landlord was deemed served notice of this proceeding on March 28, 2016, five days after they were mailed, pursuant to section 90 of the *Act*. Accordingly, I continued to hear the undisputed evidence of the Tenant in absence of the Landlord.

### Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

### Background and Evidence

The Tenant entered into a written month to month tenancy agreement which was signed on October 6, 2015. Rent of \$1,000.00 was payable on or before the first of each month. Prior to the Tenant occupying the rental unit on October 4, 2015 the Tenant paid a security deposit of \$500.00 plus \$500.00 as the pet deposit. No condition report was completed at move in or at move out. The Tenant vacated the property as of January 31, 2016 and provided the Landlord with her forwarding address the same day. The Tenant submitted evidence the Landlord had sent an express post package to her forwarding address which included copies of the tenancy agreement and a hydro bill.

That package was received by the Tenant on February 27, 2016. The Tenant asserted that package was proof the Landlord had received her forwarding address.

The Tenant testified she did not give the Landlord permission to keep her deposits. The Tenant now seeks return of double her deposits.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the undisputed evidence that the tenancy ended January 31, 2016 and the Landlord received the Tenants' forwarding address on January 31, 2016. Therefore, the Landlord was required to return the Tenant's security and pet deposits in full or file for dispute resolution no later than February 15, 2016. The Landlord did neither. Rather, the Landlord sent the Tenant a letter via express post, along with other documents, that were received by the Tenant February 27, 2016.

As per the foregoing undisputed evidence, I find, pursuant to section 62 of the *Act*, the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposits and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$500.00 security deposit and \$500.00 pet deposit since October 6, 2015.

Based on the above, I find that the Tenant has succeeded in proving the merits of their application and I award her double their security and pet deposits in the amount of **\$2,000.00** (2 x \$500.00 + 2 X \$500.00). Accordingly, I Order the Landlord to pay the Tenant the sum of **\$2,000.00**, forthwith, pursuant to section 67 of the *Act*.

The Tenant has been issued a Monetary Order for **\$2,000.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenant was successful with their application and was granted a \$2,000.00 monetary award.

This decision is final, legally binding, and 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: July 29, 2016

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Residential Tenancy Branch