



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC

This hearing dealt with the tenants' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- a monetary order for return of double the security deposit; and
- an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Tenant A.E. (the "Tenant") appeared at the teleconference hearing and gave affirmed testimony. Tenant A.E. also appeared as agent for Tenant N.E. The landlord did not appear during the hearing. During the hearing the tenant was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the tenants' application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The tenant testified that a copy of the tenants' application and Notice of Hearing were sent to the landlord by registered mail on February 24, 2017. The tenant testified that the documents were sent to the landlord's address. The tenant testified that the landlord did not pick up the registered mailing. The tenant provided the Canada Post tracking information which confirmed the testimony of the tenant. Taking into account that the tracking information supports the testimony of the tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the tenants' application and Notice of Hearing on March 1, 2017, the fifth day after the registered mailing.

## **Preliminary and Procedural Matters**

The tenant indicated that by making their claim for an order that the landlord comply with the *Act*, regulation or tenancy agreement, they are seeking an order for the landlord to return their security deposit. I find that it is not necessary to address this claim since I will be considering the tenants' claim for the return of double the security deposit.

Therefore, I dismiss the tenant's claim for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

### Issue to be Decided

- Are the tenants entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The tenant testified that the tenants entered into a month to month tenancy starting on September 25, 2016 and ending on November 25, 2016. Rent in the amount of \$1,000 was due on the 25th day of each month. The tenants provided a security deposit in the amount of \$500.00 on September 25, 2016.

The tenant testified that the tenants' forwarding address was personally handed to the landlord on November 25, 2016 when the tenants moved out. The tenant submitted a copy of a letter addressed to the landlords dated November 25, 2016 setting out the tenants' forwarding address.

The tenant testified that the tenants did not authorize the landlord to retain any portion of the tenants' security deposit. The tenants are seeking return of double their security deposit on the basis that the landlord has not returned it within 15 days of receipt of the tenants' forwarding address in accordance with the *Act*.

The tenants are seeking a monetary order in the amount of \$1,000.00 for the return of double their security deposit.

### Analysis

Based on the evidence and testimony, and on the balance of probabilities, I find the following.

As the landlord was served with the tenants' application and Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the landlord. As a result, I find the tenants' application is fully successful as I find the evidence supports the tenants' claim and is reasonable.

Section 38(1) of the *Act* requires a 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 or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit. The landlord must also pay the tenant double the amount of the security deposit with interest payable on the original amount of the security deposit.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

I find that the tenants paid a security deposit in the amount of \$500.00 on September 25, 2016. I find that the tenancy ended on November 25, 2016. I find that the landlord received the tenants' forwarding address on November 25, 2016, the date the landlord received the tenants' letter. I find that the tenants' forwarding address was given to the landlord in accordance with section 88 of the *Act*.

I find that the landlord has not obtained the tenants' written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

As the landlord received the tenants' forwarding address on the same date as the end of the tenancy, I find that the landlord was required to repay the security deposit or make an application for dispute resolution to claim against the deposit within 15 days of November 25, 2016.

I find that the landlord has not returned the tenants' security deposit in full within 15 days of receiving the tenants' forwarding address on November 25, 2016. I also find that there is insufficient evidence that the landlord applied to retain the deposit.

In accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit, with interest payable on the original amount of the deposit. No interest is payable over this period.

Based upon the foregoing, I find that the tenants are entitled to a monetary order in the amount of \$1,000.00 as follows:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$ 500.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	\$ 500.00
<b>Total Monetary Order</b>	<b>\$ 1,000.00</b>

### Conclusion

The tenants' claim for an order that the landlord comply with the *Act*, regulation or tenancy agreement is dismissed after being found unnecessary.

The tenants are granted a monetary Order in the amount of \$1,000.00 for double the security deposit. This monetary Order must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: May 08, 2017

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Residential Tenancy Branch