



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Little Mountain Residential Care and Housing Society  
and FirstService Residential BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of double the \$273.00 security deposit.

The Tenant, an advocate for the Tenant, L.H. ("Advocate"), and four agents for the Landlord, K.H., F.A., S.M., and G.L. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Advocate said and submitted receipts showing that the Tenant's Application package and documentary evidence was sent to the Landlord via Canada Post registered mail on October 25, 2019, and was received by them on October 28, 2019. He said that everything uploaded to the RTB was contained in this package, except for the proof of delivery.

The Agent, K.H., said that they received the Tenant's registered mail package and had time to review the documents. The Agent said that the Landlord's submissions were sent to the Tenant via registered mail on February 25, 2020, and that everything uploaded to the RTB was included in this package. The Advocate said that the Tenant did not receive this registered mail package from the Agents until March 2, 2020, four days prior to the hearing. However, the Advocate said that he had time to review the

submissions contained in this package, other than an audio file. I find that the Landlord's documents were late being delivered to the Tenant, and I will not consider the audio file submitted, because the Advocate did not have time to review it. This is pursuant to Rule 3.15: "...the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

[emphasis added]

### Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agents for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the owner's name and that of the property management company ("Landlord"), representing the owner; therefore, I amended the respondent's name in the Application to both the owner and the property management company, pursuant to section 64(3)(c) and Rule 4.2.

### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

### Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2015, with a monthly rent of \$458.00 (at the end of the tenancy), due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$273.00, and no pet damage deposit. The Parties agreed that the Tenant moved out of the rental unit on July 27, 2019.

I find that the critical question before me is whether the Tenant gave the Landlord his forwarding address in writing or not, and if so, when he did this.

In the hearing, the Advocate said that the Tenant attended his office on July 17, 2019, for assistance in preparing a letter to the Landlord requesting the return of the security deposit, and containing the Tenant's forwarding address. The Advocate and the Tenant submitted a document that they say is a copy of this letter with a "Received" stamp on it

above the handwritten date “July 17, 2019”. The Tenant said he received this from the Landlord’s receptionist, after he asked her to give him a copy of the letter he had delivered. The Agents said that the stamp on this document is inconsistent with the date stamp that they use in their office. They submitted a copy of a different date stamp with the property management company name on it. The Agents denied having received the Tenant’s forwarding address on July 17, 2019.

The Landlord submitted a copy of internal email communications between the Agent, K.H., and another company employee. One such email is dated September 13, 2019, and indicates that the Tenant called with his new telephone number, saying that he lived in Toronto, Ontario, but that he would not provide a forwarding address.

In another email submitted by the Landlord, dated October 28, 2019, the Agent, K.H., wrote to “C.S.”, explaining that the Tenant had not provided his forwarding address; therefore, the Landlord could not apply for dispute resolution to claim against the Tenant’s security deposit, without the Tenant’s forwarding address.

The Tenant submitted evidence of having sent the Application documents, which included his current address, to the Landlord on October 25, 2019 via registered mail. The Canada Post tracking information indicates was delivered to the Landlord on October 28, 2019.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 38 of the Act sets out a Landlord’s obligations regarding the return of a tenant’s deposits.

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant’s forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet

damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find it is more likely than not that the Tenant and the Advocate are telling the truth about the Tenant having attended the Advocate's office on July 17, 2019. I find that they prepared the letter to the Landlord with the Tenant's forwarding address, and a request for the return of the security deposit. I find the Agent's argument that the Landlord has only one kind of date stamp throughout their office to be inconsistent with common sense and ordinary human experience. I find it less likely on a balance of probabilities that the Tenant and the Advocate conspired to produce a fraudulent letter dated July 17, 2019, than the possibility that the Landlord's organization had a standard "Received" stamp and misplaced the Tenant's letter.

I find that the Tenant provided his forwarding address to the Landlord on July 17, 2019, and that the tenancy ended when the Tenant moved out on July 27, 2019.

The Landlord was required to return the \$273.00 security deposit within fifteen days of July 27, 2019, namely by August 11, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord provided no evidence that they returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with their obligations under section 38(1) of the Act.

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

This is the same result I would have ordered, had I found that the forwarding address was provided to the Landlord in the Application documents on October 28, 2019. The Landlord did not take that opportunity to return the security deposit or file for dispute resolution to claim against the security deposit, further to being served with the Tenant's address in his Application. In this case, section 38 would dictate that the Landlord should have returned the security deposit or applied for dispute resolution within 15 days of October 28, 2019, or by November 12, 2019, which they did not do.

Based on all the evidence before me, overall, I, therefore, award the Tenant with \$546.00 from the Landlord in recovery of double the security deposit. I grant the Tenant

a monetary order of **\$546.00** from the Landlord.

### Conclusion

The Tenant's claim against the Landlord for return of double the security deposit is successful in the amount of \$546.00. The Landlord did not return the Tenant's security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord having received the Tenant's forwarding address. I, therefore, award the Tenant with double the amount of the \$273.00 security deposit.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$546.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: March 11, 2020

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Residential Tenancy Branch