



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on July 21, 2020, the tenant sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlords are deemed to have been served with the Direct Request Proceeding documents on July 26, 2020, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on October 10, 2018, indicating a monthly rent of \$1,860.00 and a security deposit of \$930.00, for a tenancy commencing on October 15, 2018;
- A copy of an e-mail from the tenant to the landlords dated August 15, 2019, providing the forwarding address and requesting the return of the deposit;

- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 11:58 am on August 15, 2019;
- A copy of fifteen e-mails exchanged between the landlord's agent, the tenant, and the tenant's agent between August 2, 2019 and September 25, 2019; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of deposit paid by the tenant and indicating the tenancy ended on August 15, 2019.

### Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$930.00, as per the tenancy agreement.

I accept the following declarations made by the tenant on the Monetary Order Worksheet:

- The tenant has not provided consent for the landlords to keep all or part of the deposits;
- There are no outstanding Monetary Orders against the tenant for this tenancy; and
- The tenant has not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the tenant's statement in the Monetary Order Worksheet that the tenancy ended on August 15, 2019.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenant sent their forwarding address to the landlords by e-mail, which is not a method of service permitted under section 88 of the *Act*. However, the tenant submitted a copy of fifteen e-mails exchanged between the landlords and the tenant, starting before and continuing after the forwarding address was provided.

For this reason, I am satisfied that the landlord's e-mail address was active and regularly monitored at the time the tenant e-mailed their forwarding address. I find it reasonable to conclude that the landlords received the tenant's forwarding address.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlords were deemed to have been served with the forwarding address on August 18, 2019, three days after the tenant's e-mail was sent.

I accept the evidence before me that the landlords have failed to return the deposit to the tenant and have not filed an Application for Dispute Resolution requesting to retain the deposit by September 2, 2019, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlords must pay the tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$1,860.00, the amount claimed by the tenant for double the security deposit, as of the date of this application, June 20, 2020.

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

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1,960.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenant is provided with this Order in the above terms and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 27, 2020

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Residential Tenancy Branch