



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSDS-DR**

Introduction

This hearing dealt with an application by the tenants ("the tenant") under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing is a reconvened hearing pursuant to the Interim Decision of an Adjudicator who heard the tenants *ex parte* Direct Request Proceeding pursuant to section 38.1 of the *Act*. The tenant had brought an Application for Dispute Resolution for the return of double the security deposit and to recover the filing fee paid for the application.

The tenant confirmed they were not recording the hearing. The tenant also confirmed the email addresses of the parties to which the Decision and any Order shall be sent.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 22 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had

called into the hearing. I confirmed the correct call-in number and participant code for both landlords had been provided.

Preliminary Issue – Service of Notice of Hearing and Evidence Package

As the landlord did not attend the hearing, I considered whether the tenant served the landlord as required under the Act.

The tenancy agreement submitted by the tenant includes the landlord's residential address which is located above the rented unit. The tenant provided affirmed testimony that they served the landlord with the documents as directed by the Adjudicator including the Interim Decision, Notice of Hearing and Application for Dispute Resolution by registered mail sent on December 14, 2021, to the landlord's residence. The documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on December 19, 2021. The tenant provided a copy of the receipt and the Canada Post Tracking Number in support of service.

The Act sets out how documents must be served. Section 89(c) of the Act addresses service by registered mail. The entire section 89 states as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;
 - (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].
- [emphasis added]

The Rules of Procedure set out the obligation of the applicant, the tenant in this case, to provide proof of service. Section 3.5 states as follows:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Further to the tenant's credible testimony, which is supported by documentary evidence, I find the tenant served the landlord as required under the Act on December 19, 2021.

Preliminary Issue – Doubling

I informed the tenant of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to a doubling of the security deposit under section 38?
Is the tenant entitled to reimbursement of the filing fee under section 72?

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant submitted a copy of the tenancy agreement which named the landlord. A second landlord is named who is not a party to this Application. The tenant explained that all tenancy matters primarily took place with the named landlord.

The document supports testimony regarding the particulars of the agreement which are summarized in the following table:

INFORMATION	DETAILS
Type of tenancy	monthly

Date of beginning	May 1, 2019
Date of ending	Jun 30, 2021
Monthly rent payable on 1 st	\$2,300.00
Security deposit	\$1,150.00
Forwarding address provided	September 27, 2021, served in person
Date of Application	October 27, 2021

The landlord did not conduct a condition inspection on moving in or moving out.

The tenant did not agree that the landlord withhold any of the security deposit.

The tenant testified that the landlord has not filed an application to retain the security deposit.

The tenant provided their forwarding address on September 27, 2021 by personal service on the landlord. The tenant submitted a supporting Proof of Service in the RTB form.

The tenant requested return of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

The tenant requested reimbursement of the filing fee of \$100.00.

The tenant clarified their monetary claim during the hearing which is summarized in the following table:

ITEM	AMOUNT
Security deposit	\$1,150.00
Security deposit - doubling	\$1,150.00
Filing fee reimbursement	\$100.00

TOTAL CLAIM	\$2,400.00
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The tenant requested a Monetary Order in the amount of **\$2,400.00**.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Security deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenant gave the landlord written notice of their forwarding address on September 27, 2021, served in person.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of **doubling of the security deposit**.

Filing Fee

As the tenant is successful in the application, I award the tenant reimbursement of the filing fee under section 72.

Summary

In conclusion, I award the tenant a monetary award calculated as follows:

ITEM	AMOUNT
Security deposit	\$1,150.00
Security deposit - doubling	\$1,150.00
Filing fee reimbursement	\$100.00
TOTAL AWARD	\$2,400.00

Conclusion

I grant the tenant a Monetary Order in the amount of **\$2,400.00** as described above.

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 14, 2022

Residential Tenancy Branch