



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for a monetary order for \$900 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 1:55 pm in order to enable the landlords to call into the hearing scheduled to start at 1:30 pm. The tenant and her advocate ("**MB**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenant, MB, and I were the only ones who had called into the hearing.

MB stated that she served each landlord with the notice of dispute resolution package and supporting documentary evidence via registered mail on February 4, 2022. She provided Canada Post tracking numbers confirming these mailing which is reproduced on the cover of this decision. I find that the landlords are deemed served with these documents on February 9, 2022, five days after MB mailed them, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the tenant entitled to a monetary order of \$900 representing the return of double the security deposit?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony presented at the hearing, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

the parties entered into a verbal tenancy agreement on December 1, 2014. Monthly rent was \$905. The tenant paid a security deposit of \$450 at the start of the tenancy.

In support of the existence of the tenancy agreement, the tenant provided a copy of a written decision following a previous dispute resolution proceeding before the Residential Tenancy Branch, at which the landlords and the tenant were present. This decision set out the particulars of the tenancy agreement which were the same as the ones above.

The tenant testified that the landlord did not conduct a move-in condition inspection at the start of the tenancy.

The tenancy ended on November 30, 2020.

The landlord did not conduct a move-out condition inspection at the end of the tenancy, despite the fact he attended the rental unit briefly on November 30, 2020. The tenant submitted an e-mail from landlord WR to the tenant dated November 29, 2020 in which he wrote:

We decided it is not really worth it or needed to do an inspection tomorrow you can leave the key on the counter or in our mailbox tomorrow when you leave at 1:00 PM. We will take possession of the home at 1:00 PM. This is also safer for COVID reason anyway and any further issues is above the damage deposit. Send us your forwarding address via e-mail at your convenience and will send the RTB papers when filed.

The tenant testified that she left the key as well as a note with her forwarding address in the rental unit when she vacated shortly after 1:00 PM on November 30, 2020.

The tenant testified that she emailed her forwarding address to the landlord on January 22, 2021, when she followed up to inquire why she had not yet received her security deposit back. Landlord WR responded:

In addition we will not be returning your damage deposit at all and do to the extensive damage including the fire in your living room unreported, carpets replaced, cleaning needed, removal of junk, mold remediation etc we have no choice but to serve you with court documents for the ten of thousands of damage. We are waiting for the remainder of the final receipts and your lawyer will be served.

[as written]

MB stated that to the best of her or the tenant's knowledge, the landlord has not made any application against the tenant to either the BC Supreme Court or the Residential Tenancy Branch relating to damage to the rental unit. In any event, MB stated that the rental unit was not damaged as alleged by RW. She submitted photographs taken at the end of the tenancy which she says show the true condition of the rental unit at the end of the tenancy.

MB stated that in addition to the November 29, 2020 e-mail, WR told the tenant that she could e-mail him her forwarding address on November 27, 2020 in an e-mail as follows:

You can e-mail me your forwarding address and within the RTB allotted time frame we will send a check and refund your damage deposit.

### **Analysis**

Section 38(1) of the Act states:

#### **Return of security deposit and pet damage deposit**

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.

Based on the testimony of the tenant, I find that the tenancy ended on November 30, 2020 and that the tenant provided her forwarding address in writing to the landlord on January 22, 2021.

I note that section 88 of the Act does not include email as a permitted method of service. However, given that landlord WR twice invited the tenant to provide him with her forwarding address via email, I find that the tenant's forwarding address has been sufficiently served for the purposes of the Act, per section 71(2) of the Act.

Alternately, I find that the WR gave his email address as his address for service for the tenant's forwarding address, and that the tenant's January 22, 2022 email amounts to proper service pursuant to section 88(j) of the Act and section 43(1) of the *Residential Tenancy Regulation*.

I find that the landlords have not returned the security deposit to the tenant within 15 days of receiving her forwarding address, or at all.

I find that the landlords have not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant, or at all.

It is not enough for the landlords to allege the tenant caused damage to the rental unit. They must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenant's forwarding address.

The landlords did not do this. Accordingly, I find that they have failed to comply with their obligations under section 38(1) of the Act.

Based on the evidence presented at the hearing, I do not find that the tenant's right to the return of the deposit was extinguished pursuant to sections 24 or 36 of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlords have failed to comply with section 38(1) of the Act, and as the tenant's right to its return has not been extinguished, I order that the landlords pay the tenant double the amount of the security deposit (\$900).

### **Conclusion**

Pursuant to sections 62 of the Act, I order that the landlords pay the tenants \$900 representing an amount equal to double the tenant's security deposit.

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: August 9, 2022

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Residential Tenancy Branch