



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding FIRSTSERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On July 20, 2022, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the Tenants’ application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The adjudicator adjourned the direct request for the following reasons:

I have reviewed all documentary evidence and I find the address of the rental unit on the tenancy agreement is incomplete as it does not indicate the city in which the rental unit is located.

I also note that the tenancy agreement states that a security deposit was required in the amount of \$726.83. However, the Tenant’s Direct Request Worksheet indicates the amount of the deposit was \$725.00.

Finally, in this type of matter, the tenant must prove that they served the landlord with the forwarding address in a manner that is considered necessary as per sections 71(2) (a) and 88 of the Act. Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request.

[...]

I find the move-out Condition Inspection Report is not signed by the landlord. I also note that on the second page of the Proof of Service of the Forwarding Address form there is no signature of a witness, or of the person who received

the forwarding address, to confirm service of the forwarding address to the landlord.

I find I am not able to confirm service of the forwarding address to the landlord, which is a requirement of the Direct Request Proceeding.

I find these discrepancies raise questions that can only be addressed in a participatory hearing.

This hearing dealt with the Tenant's application under the Act for:

- return of the security deposit in the amount of \$1,450.00 pursuant to sections 38 and 38.1; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

The Tenant and the Landlord's agent SR attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

SR confirmed receipt of the Tenant's notice of dispute resolution proceeding package (the "NDRP Package"), as well as the Tenant's original direct request proceeding package and evidence. I find the Landlord was served with the NDRP Package in accordance with section 89 of the Act.

According to SR, a copy of a refund cheque mailed to the Tenant on May 13, 2022 (the "Refund Cheque") was sent to the Tenant via email as evidence for this hearing. The Tenant denied receipt of this email. The Tenant stated that the email address used by the Landlord was not correct and was an old email address. During the hearing, SR emailed a copy of the Refund Cheque to the Tenant. The Tenant reviewed the Refund Cheque and the parties proceeded to discuss this document during the hearing. I find that accepting the Refund Cheque as late evidence does not unreasonably prejudice the Tenant or result in a breach of the principles of natural justice. As such, I admit the

Refund Cheque as evidence to be considered for this hearing pursuant to Rule 3.17 of the Rules of Procedure.

Issues to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on March 1, 2019 and ended on November 29, 2021. The Tenant paid a security deposit of \$725.00.

The Tenant submitted a condition inspection report into evidence. According to this report, the parties attended a move-in inspection on March 1, 2019 and a move-out inspection on November 29, 2021. This report did not contain a full forwarding address for the Tenant as there was no unit number or postal code. SR confirmed that this report was signed by the Landlord's agent during the move-out inspection on the bottom right corner of the last page of the report, above the tenant's signature line.

SR testified that the parties had a previous dispute resolution proceeding (file number referenced on the cover page of this decision) in which the Landlord had applied to keep the Tenant's security deposit for damage to the rental unit and to recover the filing fee (the "Previous Dispute"). Records of the Residential Tenancy Branch indicate that the Landlord submitted the application for the Previous Dispute on December 10, 2021. The parties attended a hearing on April 4, 2022, and a decision was rendered on May 4, 2022 (the "Previous Decision"). SR confirmed that the arbitrator in the Previous Dispute was informed that the Landlord still had the security deposit. For reasons which are unclear, the Previous Decision awarded the Landlord a monetary order of \$317.00 against the Tenant (the "Monetary Order") without addressing the issue of the security deposit. Neither of the parties applied for a correction or review of the Previous Decision.

SR indicated that after receiving a copy of the Previous Decision, the Landlord issued the Tenant the Refund Cheque in the amount of \$483.00 on May 13, 2022. SR expressed that refund cheque was for the difference between the security deposit held by the Landlord and the Monetary Order. SR indicated that the Refund Cheque was sent to the Tenant's forwarding address by ordinary mail, without tracking. SR confirmed that the Refund Cheque was never cashed. SR indicated she was surprised that the Tenant filed for the full security deposit amount despite the Previous Decision. SR expressed that the Landlord was still willing to send the Tenant a cheque for the difference.

The Tenant testified that he never received the Refund Cheque or any communication from the Landlord. The Tenant submitted that he is seeking to recover double the security deposit since he did not receive it back within 15 days. The Tenant acknowledged that he received a copy of the Previous Decision and has not paid the Monetary Order to the Landlord.

The Tenant indicated that he provided his full forwarding address to SR's former co-worker AF via email and text message on the date of the move-out inspection. The Tenant questioned how the Landlord was able to serve him with its application for the Previous Dispute if the Landlord did not have the Tenant's forwarding address.

SR stated that the Landlord did not receive the Tenant's forwarding address initially and that it was not provided on the condition inspection report. SR explained that the Landlord may have obtained the Tenant's forwarding address from AF when the Landlord was preparing the application for the Previous Dispute.

Analysis

1. Is the Tenant entitled to the return of double the security deposit?

According to section 38(1) of the Act, a landlord must repay a security deposit to the tenant with interest, or make an application for dispute resolution claiming against the deposit within 15 days after the later of the tenancy end date or the date the landlord receives the tenant's forwarding address in writing, unless the landlord has the tenant's written consent or a previous order from the Residential Tenancy Branch under sections 38(3) of (4) of the Act.

If the landlord does not repay a security deposit or make an application within 15 days as required under section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, I find the tenancy ended on November 29, 2021.

I find there is insufficient evidence that the Tenant had served the Landlord with his forwarding address in writing in accordance with the Act. Section 88 of the Act provides the acceptable ways in which documents such as a forwarding address letter may be served on a person. These methods include:

- Leaving a copy with the person
- If the person is a landlord, leaving a copy with an agent of the landlord
- Sending a copy by registered mail or 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
- By leaving a copy at the person's address with an adult who apparently resides with the person
- By leaving a copy in a mailbox or mail slot for the address at which the person resides, or if the person is a landlord, at the address at which the person carries on business as a landlord

Text message is not an acceptable method of service under section 88 of the Act. Email is an acceptable method of service only if the party being served had provided the email address as an address for service in accordance with the regulations. I find the Tenant has not provided evidence to show that the Landlord had consented to email service. In any event, I find the Tenant has not submitted a copy of any email sent with the Tenant's forwarding address.

I find the cover page of the Previous Decision states the Tenant's forwarding address as confirmed during that hearing. Therefore, I find the Landlord was sufficiently served with the Tenant's forwarding address in writing by May 4, 2022 pursuant to section 71(2)(b) of the Act.

I find the Landlord had made the application for the Previous Dispute on December 10, 2021. Therefore, I find the Landlord made an application to claim against the security deposit within 15 days of the later of the tenancy end date and the date that the Landlord received the Tenant's forwarding address in writing, in compliance with section 38(1) of the Act.

I note I am satisfied that the Landlord's Previous Dispute was an application to claim against the security deposit for the following reasons. First, the "S" in the dispute code "MNDL-S" stated on the Previous Decision is indicative of a claim type in the RTB system where a landlord is claiming against a security deposit or pet damage deposit. Second, the original notice of dispute resolution proceeding for the Previous Dispute dated December 15, 2021 also describes the Landlord's claim as follows:

01 - I want compensation for damage caused by the tenant, their pets or guests to the unit, site or property - holding pet or security deposit

\$617.00

Applicant's dispute description

Damages at the unit was not repaired by tenant when he moved out. Also tenant did not sign the total cost of repair to be deducted from the damage deposit on inspection report.

(emphasis underlined)

According to Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

For reasons which are unclear, the Previous Decision was accompanied by a Monetary Order instead of an order that the Landlord return the balance of the security deposit (less the \$317.00 awarded to the Landlord) to the Tenant.

I accept SR's testimony that the Landlord attempted to give the Tenant a partial refund after receiving the Previous Decision, though I note it is also unclear how the Landlord had determined the amount for the Refund Cheque.

Based on the foregoing, I am unable to conclude that the doubling provision in section 38(6) of the Act applies, since I find the Landlord did comply with timeline for making an application under section 38(1) of the Act.

I find the Tenant is nevertheless entitled to a return of the original amount of his security deposit. I find the parties completed move-in and move-out inspections as well as condition inspection reports. In addition, I have found that the Landlord was sufficiently served with the Tenant's forwarding address within one year of the tenancy end date. Therefore, I find the Tenant's right to the return of the security deposit was not extinguished under any of sections 24(1), 36(1), or 36 of the Act.

I find it is undisputed that the Refund Cheque was never cashed. I find the Landlord has not asserted any other basis for retaining the security deposit and agrees to return the security deposit, less the previous Monetary Order, to the Tenant. I find that with the previous Monetary Order already granted to the Landlord, even though I accept it remains unpaid and outstanding, it is appropriate for me order a return of the security deposit to the Tenant in full. I will leave it up to the parties to set off the orders against each other and to arrange for payment.

In addition, section 38(1) of the Act requires that interest on the security deposit be paid to a tenant. In my view, where a landlord has attempted to return a security deposit to a tenant, but the payment was not accepted by the tenant, interest does not accrue beyond that attempted return date. However, here I find the Landlord has provided insufficient evidence to prove on a balance of probabilities that the Refund Cheque was properly mailed to the Tenant in May 2022. I am unable to find that it was the Tenant who had refused to cash the Refund Cheque. Accordingly, I find the Tenant is entitled to interest at the prescribed rates on the security deposit to the date of this decision, or April 20, 2023.

The prescribed interest rate on deposits was 0% from 2019 to 2022 and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original security deposit amount, before any deductions are made, and is not doubled.

Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$4.27 of interest on the security deposit from the start of the tenancy to the date of this decision, calculated as follows:

2019 \$725.00: \$0.00 interest owing (0% rate for 83.82% of year)

2020 \$725.00: \$0.00 interest owing (0% rate for 100.00% of year)
 2021 \$725.00: \$0.00 interest owing (0% rate for 100.00% of year)
 2022 \$725.00: \$0.00 interest owing (0% rate for 100.00% of year)
 2023 \$725.00: \$4.27 interest owing (1.95% rate for 30.13% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$729.27 (or \$725.00 + \$4.27) for the return of the security deposit plus interest.

2. Is the Tenant entitled to reimbursement of the filing fee?

The Tenant has been partially successful in this application. I find that if the Landlord had undertaken a bit more effort to communicate with the Tenant or to ensure that the Refund Cheque was received by the Tenant, this application could have likely been avoided. As such, I award the Tenant reimbursement of his filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Return of Security Deposit	\$725.00
Interest on Security Deposit	\$4.27
Filing Fee	\$100.00
Total Monetary Order for Tenant	\$829.27

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$829.27**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court, and enforced as an Order of that Court.

The Landlord is at liberty to set off the previous Monetary Order against this Order and pay the difference to the Tenant.

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: April 20, 2023