



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord/s agent attended via conference call, but did not submit any documentary evidence. The tenant provided evidence that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 18, 2016 and has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The landlord is deemed to have received the package 5 days later as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation, for the return of double the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant stated that this tenancy began on October 1, 2015 and that a \$625.00 security deposit was paid. The tenant provided affirmed testimony that the tenancy ended on October 31 or November 1 of 2015 and that the landlord was provided his forwarding address in writing in a letter on October 31, 2015.

The landlord's agent disputes the claims of the tenant stating that the tenant had ended the tenancy prematurely on November 1, 2015 breaching a 1 year fixed term tenancy agreement and has also failed to provide his their forwarding address in writing to the landlord.

The tenant also seeks a monetary claim of \$1,875.00 (3 X \$625.00) for the inconvenience of the landlord failing to return the \$625.00 security deposit.

The landlord disputes this claim stating that he was unable to return the tenant's security deposit as the tenant never provided his forwarding address in writing to the landlord.

### Analysis

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

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant has provided direct testimony that his forwarding address in writing was provided to the landlord. The landlord has provided direct testimony that the forwarding address in writing was never provided. As such, I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to satisfy me that the tenant's forwarding address in writing was provided to the landlord.

On the tenant's monetary claim of \$625.00 for the return of the security deposit, I find that as the tenant has not yet provided his forwarding address in writing to the landlord that the tenant's monetary claim is premature and is dismissed with leave to reapply.

As for the tenant's monetary claim of \$1,875.00 for compensation for the inconvenience of the landlord failing to return the security deposit, I find that as the tenant has not yet given his forwarding address in writing that this portion of the tenant's application is also dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed with leave to reapply.

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: June 17, 2016

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Residential Tenancy Branch