



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 10 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the landlord failed to attend the hearing and present her claim, I dismiss her claim without leave to reapply. Because the tenancy has ended and the tenant testified that the landlord maintains possession of the security deposit, I heard the tenant's submission in relation to the security deposit.

### Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit?

### Background and Evidence

As per the testimony of the tenant, the tenancy began on January 1, 2016 on a fixed term until August 31, 2016. Rent in the amount of \$600.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$300.00 at the start of the tenancy. The tenant vacated the rental unit on August 29, 2016.

The tenant testified that written condition inspection reports were conducted at the start and end of tenancy. The tenant testified that he personally served the property manager his written forwarding address on August 29, 2016.

### Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

Based on the tenant's undisputed testimony, the landlord received the forwarding address on August 29, 2016 and filed an application to retain the deposit on September 13, 2016, which is within the fifteen days allowable under the *Act*. I find that although the landlord complied with the requirement under section 38 to make an application to keep the deposit, I find the landlord failed to satisfy her burden in proving her claim.

Policy Guideline #17 establishes that 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, provided the tenant's right to the return of the deposit has not been extinguished. In this case, I find the tenant has not extinguished his right to the return of his security deposit and therefore order the landlord to return the security deposit in the amount of \$300.00 to the tenant.

### Conclusion

The landlord's entire application has been dismissed.

I issue a monetary order in the amount of \$300.00 to the tenant for the 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: March 14, 2017

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Residential Tenancy Branch