



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD FF

### **Introduction**

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 2:12 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

### **Preliminary Issues - Service of the Application for Dispute Resolution and Provision of Forwarding Address**

The tenant testified during the hearing that he had served the landlord with his application for dispute resolution by way of registered mail, but could not provide a tracking number, receipts, or details about when the package was served on the landlord.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

*89(1) An application for dispute resolution,...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;...*

As there is no way to confirm that the landlord was served in a manner required by section 89(1) of the *Act*, I cannot consider the tenant's application for a Monetary Order. I am not satisfied that the landlord was properly served with any portion of the tenant's application for dispute resolution.

Furthermore, the tenant testified that he could not recall when or how he provided the landlord with his forwarding address.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

The tenant had applied for the return of their security deposit, but did not provide sufficient evidence to support that the landlord was provided with his forwarding address in writing, as required by section 38 of the *Act*. The landlord did not attend the hearing, and the tenant did not provide any witness testimony or any kind of confirmation that the landlord had received the forwarding address from the tenant.

As the tenant's application has not been served to the landlord in a method required under section 89(1) of the *Act*, and as the tenant was unable to provide sufficient evidence to demonstrate that the landlord was provided with his forwarding address in writing, I dismiss the tenant's application with leave to reapply.

The tenant must provide his forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenant's security deposit, or make an application for dispute resolution. If the landlord fails to

comply with section 38 of the *Act*, the tenant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

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: September 27, 2017

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Residential Tenancy Branch