



# 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* (the *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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

### **Preliminary Issue-Tenant's Forwarding Address**

This fixed-term tenancy began on December 1, 2016 and ended on June 30, 2017 when the tenant moved out. Monthly rent was set at \$1,500.00. The landlord had collected a security deposit in the amount of \$750.00 and continues to hold this deposit.

The tenant testified that she had provided the landlord with her forwarding address by text message on June 29, 2017.

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.

RTB Policy Guideline 17, paragraph 10 establishes the following:

*The landlord has fifteen days from the later of the day 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 plus interest to the tenant.*

As a text message is not considered a form of written notification, the tenant's application for the return of her security deposit is dismissed with leave to reapply.

As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties the hearing date, January 10, 2017, serves as the date that the landlord was served with the tenant's forwarding address, and that that the deposits must be dealt with in accordance with section 38 of the *Act*.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

### **Conclusion**

I dismiss the tenant's application for the return of her security deposit with leave to reapply.

The tenant's forwarding address was confirmed during the hearing, and the landlords were informed that they had 15 days from the date of the hearing to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The tenant's application to recover the filing fee is dismissed without 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: January 11, 2018

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Residential Tenancy Branch