



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIONS COURT HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **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 its 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 acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing.

### Issue to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on September 1, 2009 and ended on April 30, 2016. The tenants were obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$475.00 security deposit. The tenant testified that he took over the tenancy from a friend and that he paid the friend the security deposit. The tenant testified that the landlords were aware that he had taken over the tenancy. The tenant testified that he provided his forwarding address in writing to the landlord on July 25, 2017. The tenant seeks the return of the \$475.00 deposit and is also seeking the recovery of the \$100.00 filing fee.

The landlord testified that the tenant did take over the tenancy and that the original deposit amount has not been paid out. The landlord confirmed that the first time they received the tenant's forwarding address in writing was on July 25, 2017.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the tenant's claim and my findings around each are set out below.

Based on the testimony of the parties I am satisfied that the landlord still holds a deposit and that they were aware that the tenant had taken over the tenancy and retained that deposit in trust.

The tenant seeks the return of his deposit. Section 39 of the Act addresses the issue before me as follows:

**Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, if a tenant does not give a landlord a **forwarding address in writing within one year after the end of the tenancy.**

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

**(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.**

The tenant testified and confirmed on three separate occasions that he did not provide his forwarding address in writing until July 25, 2017; well over one year after the tenancy ended. Based on the above, the tenant has extinguished their right to the deposit and the landlord is entitled to retain in.

**Conclusion**

The tenant's application is dismissed in its entirety 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: April 12, 2018

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Residential Tenancy Branch