



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNSD

### Introduction

This hearing dealt with an Application by the tenant for a monetary order for return of the security deposit paid to the Landlord in the amount of \$1,100.00 and, for the return of the filing fee for the Application.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:15 PM to enable the tenant to call into this teleconference hearing scheduled for 2 PM. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and, to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I have reviewed and considered all written evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Has there been a breach of section 38 of the Residential Tenancy Act ("the *Act*"), by the Landlord?

Is the tenant entitled to the return of the deposit or is the landlord entitled to retain an amount from the deposit pursuant to section 38 (4) of the *Act*?

### Background and Evidence

The landlord and the tenant entered into a fixed term tenancy agreement commencing September 1, 2014, for a period of 3 years, ending on August 31, 2017, ("the Agreement"). Both parties signed the Agreement in August of 2014, and a copy was in evidence before me.

The tenant paid the landlord a security deposit of \$1,100.00 on or about August 14, 2014.

The tenant vacated the premises on July 31, 2017, one month before the end of the fixed term tenancy.

There is no documentary evidence that the tenant provided the landlord with written notice of his forwarding address to return the security deposit at any time, other than through the service of the Tenant's Application for Dispute Resolution. There is no documentary evidence before me regarding when or how the Tenant's Application for Dispute Resolution was served on the landlord.

The landlord gave uncontradicted evidence that the tenant had not provided his forwarding address at any time after vacating the premises other than as part of the Tenant's Application for Dispute Resolution package. This was left with the concierge of the building where the premises were located and given to the landlord's ex-wife and subsequently to the landlord at some unspecified point in time before today.

The landlord gave uncontradicted evidence that the tenant did not pay any rent of August of 2017 and, when the landlord tried to cash the postdated cheque that the tenant had provided for the August rent it was dishonored by the bank.

### Analysis

The *Act* contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case there is no evidence before me about when exactly the landlord received the tenant's forwarding address in writing. Absent this evidence I cannot find that the landlord is in breach of section 38 of the *Act*.

Section 38 (4) of the *Act* provides that in certain circumstances a landlord may retain an amount from a security deposit. Section 38 (4) (b) of the *Act* provides that a landlord may retain an amount from a security deposit if:

"after the end of the tenancy the director orders that the landlord may retain the deposit".

In the circumstances of this case I exercise my authority in accordance with section 62 (1) (b) of the *Act* and, make an order that the landlord may keep the security deposit of \$1,100.00 as partial compensation for the fact that the tenant vacated the premises and stopped paying rent a month before the end of the fixed term tenancy and in breach of the terms of the written agreement as between the parties.

### Conclusion

In the absence of the tenant to present evidence in support of their request, the tenant's application is dismissed without leave to re-apply.

The landlord may retain the entire security deposit of \$1,100.00.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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 20, 2018

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Residential Tenancy Branch