



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant landlord did not attend this hearing, which lasted approximately 13 minutes. The tenant and his advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that his advocate had permission to speak on his behalf at this hearing.

The tenant's advocate confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

### Preliminary Issue – Dismissal of Landlord's Application

Rule 7.3 of the RTB *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.*

In the absence of any appearance by the landlord, I order the landlord's entire application dismissed without leave to reapply.

#### Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- **a landlord's application to retain all or part of the security deposit;**

*or*

- *a tenant's application for the return of the deposit.*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. **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.***

As per the above, I am required to deal with the tenant's security deposit because the landlord has applied to retain it, even though the landlord has not appeared at this hearing.

#### Issue to be Decided

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

#### Background and Evidence

The tenant's advocate testified regarding the following facts. This month-to-month tenancy began around the end of April 2015, although no specific date was given. The tenancy ended on September 11, 2017, when a fire occurred in the building, the tenancy was frustrated and the rental unit was not habitable by the tenant. Monthly rent in the amount of \$600.00 was payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant and the landlord continues to retain this deposit in full. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on October 6, 2017, by way of a letter of the same date, that was mailed to the landlord. In the landlord's application, the landlord provided a copy of this letter indicating on the letter that it was received on October 18, 2017, along with a copy of the mail envelope.

The landlord did not have written permission to keep any amount from the tenant's security deposit.

The landlord filed this application for dispute resolution on October 26, 2017, to keep the tenant's entire security deposit of \$250.00, stating that the "tenant failed to remove his belongings from the site." The tenant stated that he was seeking the return of his security deposit from the landlord.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant and his advocate at this hearing. The tenancy ended on September 11, 2017. The tenant provided a written forwarding address to the landlord on October 6, 2017 and the landlord acknowledged receipt of the letter on October 18, 2017. The tenant did not give the landlord written permission to retain any amount from the security deposit. The landlord did not return the deposit to the tenant. Although the landlord applied to retain the deposit on October 26, 2017, within 15 days of receiving the forwarding address on October 18, 2017, the landlord's right to claim against the deposit for damages was extinguished by sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy. The landlord's application for this hearing related to damages of \$250.00, for failure to remove belongings.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit of \$250.00. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of his security deposit, totalling \$500.00, from the landlord. The tenant is not required to specifically seek double the value of the deposit, as long as he does not waive his rights to it, which he did not during the hearing.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary Order in the tenant's favour in the amount of \$500.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 08, 2018

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Residential Tenancy Branch