



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting payment of his security deposit of \$500.00.

The Landlord appeared for the scheduled hearing, however the Tenant did not; I left the telephone conference line open for 20 minutes past the scheduled hearing time and confirmed that the Landlord and I were the only participants on the line. I find that the notice of hearing was properly served; no documentary evidence was submitted by either party.

The hearing process was explained and the participant was given an opportunity to ask any questions about the process. The participant was given a full opportunity to present affirmed evidence and to make submissions.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issue to be Decided

Is the Tenant entitled to the return of his security deposit, pursuant to section 38 of the *Residential Tenancy Act* (“Act”)?

### Background and Evidence

This tenancy began in 2016 at agreed monthly rent of \$1,200.00, with a \$600.00 security deposit. It ended by way of a One Month Notice to End Tenancy served by the

Landlord, which was confirmed in an earlier decision of the Residential Tenancy Branch dated April 27, 2017. In that decision, the Landlord was awarded the \$100.00 filing fee and authorized to retain \$100.00 of the security deposit in satisfaction of that amount; it was ordered that the remaining security deposit was reduced to \$500.00, and all other claims for damages were dismissed with leave, until the tenancy was over.

The Tenant moved out the start of May, 2017 and did not provide a forwarding address in writing. However, the Landlord states that the Tenant agreed to place the keys in an envelope and mail them to her; she only received an empty envelope. She tried to contact the Tenant, but in the end had to re-key the premises. She denied having the Tenant's forwarding address. She states that there was a move-out inspection completed and that the premises were left clean by the Tenant, but that after receiving the Order of Possession, the Tenant contacted police and filed a statement that his place had been broken into, and that a window worth \$1,000.00 had been broken.

The Tenant did not sign over the security deposit to the Landlord; the Landlord feels she is entitled to retain it due to the cost of repairing the window and re-keying the locks. She states that she was unaware of the requirement to file a claim for the security deposit within 15 days of the tenancy ending or receipt of the Tenant's forwarding address, although admitted that she has had tenants in several rental properties for many years.

### Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to reapply. I chose to proceed with hearing submissions from the Landlord in the Tenant's absence, to address the security deposit she continues to hold in trust for the Tenant.

I find that the forwarding address only provided by the Tenant on the Application for Dispute Resolution filed May 11, 2018 does not meet the requirement of a separate written notice and should not be deemed as providing the Landlord with the forwarding address. The date of this hearing, however, now becomes the ordered date the Landlord received notice of the Tenant's forwarding address.

Although the Tenant did not appear for the hearing, I am not prepared to dismiss his Application *with leave to reapply* for the following reasons.

Section 39 of the Act states that if a tenant does not give a landlord a forwarding address within one year after the end of the tenancy, the landlord may keep the security deposit and the right of the tenant to the return of the security deposit is extinguished. I am satisfied that the Landlord is not deemed to have received the forwarding address until the date of the hearing, June 22<sup>nd</sup>, 2018 this is over one year after the end of the tenancy, and therefore the Tenant has lost his right to the return of the security deposit, pursuant to section 39 of the Act. Accordingly, I dismiss his Application *without leave to reapply*.

### Conclusion

The Tenant's Application is hereby dismissed without leave to reapply. The Landlord is entitled to retain the security deposit of \$500.00.

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 22, 2018

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Residential Tenancy Branch