



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD MNDC MNR

### Introduction

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

- a return of the security deposit pursuant to section 38 of the *Act*; and
- a monetary award pursuant to section 67 of the *Act*.

The tenant, counsel for the landlord (O.M.) and the landlord K.L. attended the hearing. Both parties were given a full opportunity to be heard, to present their testimony and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution and evidentiary package, while the tenant said she did not receive the landlord's evidentiary package. The landlord said that a copy of the evidentiary package was sent to the tenant's last known address by way of Canada Post Registered Mail on June 18, 2018. The Canada Post receipt and tracking number were provided to the hearing. Pursuant to sections 88 & 90 of the *Act*, the tenant is deemed served with the landlord's evidentiary package on June 22, 2018, five days after its posting.

### Issue(s) to be Decided

Can the tenant recover a monetary award? Is the tenant entitled to a return of her security deposit?

### Background and Evidence

Undisputed testimony was provided to the hearing that this tenancy began in August 2015 and ended by way of Mutual Agreement on January 3, 2017. Rent was \$750.00 per month, and a

security deposit of \$375.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant has applied for a monetary award of \$35,000.00. She said that this figure represented the hardships that she had faced following the conclusion of the tenancy, along with expenses she incurred as a result of storage and moving, and a return of her security deposit. The tenant said that she had many documents and photos which were not provided as part of her application package that demonstrated mould, damage and plumbing issues in the rental unit. The tenant said that a Judge with the Supreme Court of British Columbia had previously ordered that the landlords return her security deposit and awarded her a small monetary award, however, no copy of this judgement was provided at the hearing.

Counsel for the landlord disputed that the tenant should be entitled to any monetary award. The landlord highlighted the fact that no specific breakdown of alleged damages was provided as part of the tenant's application and that the tenant appeared to be seeking \$35,000.00 without any evidence to support her claim. Counsel called K.L. to provide sworn testimony. K.L. explained that no forwarding address was ever provided in writing to the landlords, and that this tenancy ended by way of Mutual Agreement after the parties appeared before a Judge at the Supreme Court of British Columbia. K.L. disagreed with the tenant's submissions that this Judge had ordered the return of the tenant's security deposit and said the only matter the parties settled was the mutual agreement to end tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to a claim for a monetary award.

After considering the oral testimony of the parties and having reviewed the limited evidence supplied at the hearing, I find that the tenant has failed to demonstrate that she is entitled to a monetary award. The tenant sought a large monetary award in satisfaction for her alleged loss. It would be reasonable to expect that a person applying for an award of such magnitude would provide a significant amount of documentary evidence to support their claim. The tenant failed to do this and furthermore, failed to provide any real detail or breakdown of her application for a monetary award. I find that the tenant has not provided sufficient evidence in support of her application for a monetary award and therefore dismiss the application.

In addition to a monetary award, the tenant has applied for a return of her security deposit. During the hearing, the tenant said that she sent the landlord a copy of her forwarding address, however, no date on which this address was purportedly sent to the landlord was provided. Agent K.L. testified at the hearing that no forwarding address was ever received by the landlords.

Section 39 of the *Act* states, “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, the landlord may keep the security deposit and the right of the tenant to the return of the security deposit is extinguished.” In this case, the tenancy ended on January 3, 2017. The tenant therefore had until January 3, 2018 to apply for a return of her security deposit. A review of the tenant’s application reveals that it was submitted to the *Residential Tenancy Branch* on November 29, 2017, therefore section 39 of the *Act* does not provide a basis, in this case, for the landlord to retain the security deposit.

I turn my attention to section 38 of the *Act*. Section 38 of the *Act* requires the landlord to either return a tenant’s security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and upon receipt of the tenant’s 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 or pet 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 as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant’s security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was presented at the hearing that the landlord applied to retain the tenant’s security deposit within 15 days of the end of the tenancy or following receipt of the tenant’s application for dispute which would have contained the tenant’s forwarding address. Oral testimony provided by K.L. and disputed by the tenant explained that no forwarding address was ever provided to the landlord.

*Residential Tenancy Practice Directive* states as follows:

A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

Arbitrators are directed to not make an order for return of the Deposits (whether in the original amount or doubled as per paragraph 38(6)(b) of the *Act*), based on the date the Application was served or filed by the Tenant.

It therefore follows, that if a tenant provides their forwarding address only on an Application for Dispute Resolution form, this does not meet the requirement of a separate written notice and is not deemed to be providing the landlord with a forwarding address. Accordingly, I find the tenant had not provided the landlord with her forwarding address for the return of the deposits as required under Section 39 prior to their Application and as such, their Application seeking return of the deposits was premature.

I therefore order, effective July 5, 2018, the landlord is deemed served in writing with the forwarding address as it appears on the tenant's application for dispute resolution.

### Conclusion

I dismiss the tenant's application for a monetary award without leave to reapply.

The tenant's application for a monetary order in the amount of the deposits is dismissed with leave to reapply should the landlord fail to return the deposit or file an Application for Dispute Resolution seeking to claim against the deposit within 15 days of July 5, 2018.

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: July 5, 2018

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Residential Tenancy Branch