



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF-T

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested return of his security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference on July 9, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to return of his security deposit?
2. Should the Tenant recover the filing fee paid?

### Background and Evidence

At the outset of the hearing the Landlord, A.H., testified that they had returned the entirety of the Tenant's security deposit the day after receiving his forwarding address. He expressed his confusion as to why the hearing was proceeding when the Tenant had already received his funds.

The Tenant stated that he provided his forwarding address to the Landlord in early November 2017, yet did not receive his deposit back until the end of December. The Tenant failed to provide any documentary evidence to support his claim that he provided his forwarding address in early November 2017.

The Tenant applied for Dispute Resolution on November 23, 2017.

### Analysis

Section 38 of the *Residential Tenancy Act* deals with the return of security deposits and provides as follows.

#### **Return of security deposit and pet damage deposit**

**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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 39 of the *Act* further provides that a Landlord may retain a Tenant's security deposit if they do not provide a forwarding address within a year of the end of the tenancy. Accordingly, a Tenant's right to return of their security deposit is not triggered until they provide the Landlord with their forwarding address in writing.

As the Applicant, the Tenant bears the burden of proving his claim on a balance of probabilities.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

As noted during the hearing, security deposits are trust funds and Landlords must deal with them in accordance with the *Act*. A Landlord must receive a written request by a Tenant for return of the funds as well as a specific forwarding address to which to send the funds.

I am unable, based on the evidence before me, to determine the date the Tenant provided his forwarding address in writing to the Landlord. The Tenant claimed it was

sometime in early November 2017, yet could not provide a specific date, or any documentary evidence to support this claim. The Landlord stated that they received the Tenant's forwarding address in writing in December of 2017 and returned the funds to him the following day.

While it is always difficult to reconcile conflicting testimony; where such discrepancies exist, and without documentary evidence supporting one party's version of events, I am unable to prefer the evidence of one party over another. However, as it is the Tenant who bears the burden of proving his claim on a balance of probabilities, the result is that I find that the Tenant has failed to meet this burden.

I find that the Tenant received his security deposit from the Landlord. I am unable to find that the Landlord breached section 38 such that I decline the Tenant's request for double his deposit.

As the Tenant was unsuccessful, his request for recovery of the filing fee is similarly dismissed.

### Conclusion

The Tenant's Application is dismissed.

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 10, 2018

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Residential Tenancy Branch