



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent, damage to the rental unit, and recovery of the filing fee, as well as authorization to withhold the Tenant’s security deposit.

The hearing was convened by telephone conference call and was attended by the Tenant and the Tenant’s advocate (the “Advocate”), both of whom provided affirmed testimony. The Landlord did not attend. Although the line remained open while the phone system was monitored for 28 minutes, neither the Applicant nor an agent acting on their behalf appeared in the hearing.

Further to this, the Tenant and the Advocate testified that the Tenant was never served with a copy of the Application, the Notice of Hearing or any evidence from the Landlord and only became aware of the hearing through an auto-generated e-mail from the Residential Tenancy Branch (the “Branch”) as the Landlord entered the Tenant’s e-mail address when filing the Application. Based on the above, the Tenant and the Advocate stated that the Tenant has no idea what the Landlord’s Application is about and has not had a fair opportunity to submit any evidence in her defense.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Tenant, the Advocate, and I attended the hearing on time and ready to proceed, I commenced the hearing as scheduled at 1:30 P.M. on August 20, 2018. Rule 7.3 of the Rules of Procedure states that 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 reapply. As the Landlord failed to appear at the hearing of their own Application, or to have an agent appear on their behalf, I therefore dismiss the Landlord’s Application without leave to reapply pursuant to rule 7.3 of the Rules of Procedure.

In any event, as the Tenant and the Advocate testified that the Tenant was never served with a copy of the Application, the Notice of hearing, or any evidence in relation to this matter, and there is no evidence before me to the contrary, I find that it would have been administratively unfair and a breach of both the Rules of Procedure and the principles of natural justice to have heard the Landlord's claim, as the Tenant did not have a fair opportunity to know the case against her or to provide any evidence in her defense.

Despite the fact that the Landlord's Application is dismissed without leave to reapply, Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #17 states that the arbitrator will order the return of the 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 a part of the security deposit, whether or not the tenant has applied for its return, unless the tenant's right to the return of the deposit has been extinguished under the *Act*.

As a result, I find that I must now determine if the Tenant is entitled to the return of all or a portion of the security deposit.

#### Preliminary Matters

At the outset of the hearing I confirmed the spelling of the Tenant's name and became aware that the name listed on the Application is not the correct legal name for the Tenant. In order to ensure that the decision and any orders issued as part of the decision are enforceable, I obtained the correct legal spelling of her name from the Tenant and amended the Application pursuant to the *Act* and the Rules of Procedure.

#### Issue(s) to be Decided

Is the Tenant entitled to the return of all or a portion of the security deposit?

#### Background and Evidence

The Tenant and Advocate testified that a \$400.00 security deposit was paid at the start of the tenancy, which ended on December 31, 2018. The Advocate testified that on January 5, 2018, she sent the Landlord the Tenant's forwarding address in wiring by registered mail and the Tenant testified that as of the date of the hearing, none of the security deposit has been returned to her.

The Tenant and the Advocate argued that although the Tenant attended the move-in condition inspection, she did not attend a move-out condition inspection as the Landlord never provided her with two opportunities to attend as required by the *Act*. In fact, the Tenant testified that she never received any date or time for a proposed inspection from the Landlord.

Further to this the Tenant testified that there was no agreement in writing or otherwise for the Landlord to retain any portion of the security deposit and as a result, she is entitled to the return of double her deposit amount as the Landlord extinguished their right to claim against it by failing to provide her with two opportunities for the move-out inspection.

### Analysis

Section 38 of the *Act* states that within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the security deposit to the tenant or make an application claiming against it, unless they have a right under the *Act* to retain all or a portion of it.

As the Advocate testified that she sent the Landlord the Tenant's forwarding address in writing by registered mail on January 5, 2018, I find that the Landlord is deemed to have received the forwarding address on January 10, 2018, pursuant to section 90 of the *Act*.

As there is no evidence before me that the Landlord was entitled to retain all or a portion of the security deposit pursuant to section 38 of the *Act*, I find that the Landlord was obligated to either return it in full or file a claim against it by January 25, 2018. As the Landlord filed their claim seeking retention of the security deposit against unpaid rent and damage to the rental unit on January 13, 2018, I find that the Landlord filed their Application in compliance with section 38(1) of the *Act*. Although the Tenant and the Advocate argued that the Tenant is entitled to double the amount of the initial security deposit as the Landlord extinguished their right to retain or file a claim against the security deposit pursuant to section 36(2) of the *Act* by failing to offer the Tenant two opportunities for a condition inspection at the end of the tenancy; I find that extinguishment under section 36(2) of the *Act* only relates to claims for damage to the rental unit. As the Landlord applied to retain the security deposit for damage to the rental unit as well as unpaid rent, I therefore find that the Landlord had the right to both file the claim and to retain the security deposit in relation to the claim for unpaid rent, despite any possible extinguishment in relation to damage. As a result, I find that the

Tenant is not entitled to double the security deposit as the Landlord filed their claim in compliance with section 38(1) of the *Act*.

Despite the foregoing, I find that the Tenant is still entitled to the return of the \$400.00 security deposit as there is no evidence before me that the tenant extinguished her right to its return under the *Act* and the Landlord's Application seeking retention of the security deposit is dismissed without leave to reapply. Based on the above, the Tenant is therefore entitled to a Monetary Order in the amount of \$400.00.

### Conclusion

The Landlord's Application is dismissed in its entirety without leave to reapply.

Pursuant to sections 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$400.00**. The Tenant is provided with this 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: August 20, 2018

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Residential Tenancy Branch