



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOTUS HOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNDCT, MNSD

### Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:18 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant gave undisputed sworn testimony supported by written evidence that they sent the landlord a copy of the tenant's dispute resolution hearing and written evidence packages by registered mail on August 27, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with this material.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and other money owed arising out of this tenancy? Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

On January 8, 2016, the tenant signed the first of three one-year fixed term tenancy agreements with the landlord for residency in one of the landlord's rental suites commencing on February 1, 2016. According to the terms of the first two of these agreements, the parties both agreed that the tenant would vacate the premises at the end of the fixed term unless a new tenancy agreement were established. Monthly rent began at \$995.00, increased to \$1,050.00 on February 1, 2017, and to \$1,125.00 on February 1, 2018. The tenant paid a \$497.50 security deposit when this tenancy began.

The tenant vacated the rental unit by June 30, 2018. The tenant testified that he wrote down his forwarding address and gave it to the landlord's representative a few days after he vacated the premises in anticipation of receiving a return of his security deposit. The tenant said that he did give the landlord written authorization to retain \$50.00 for the cleaning of his rental unit at the joint move-out condition inspection at the end of this tenancy.

The tenant maintained that the landlord charged rent in excess of the Residential Tenancy Branch's (the RTB's) allowed rent increase provisions on each of the occasions when he signed a new tenancy agreement. His application for a monetary award of \$1,812.10 included requests for the return of all of his security deposit, including the \$50.00 cleaning fee, and amounts of \$477.60 and \$207.00 for rent that he believes he was overcharged during the course of this tenancy.

At the hearing, the tenant advised that shortly after submitting his application for dispute resolution, he received a return of \$447.50 from his security deposit from the landlord. The tenant estimated that this occurred in mid-August 2018.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the landlord had 15 days after July 3, 2018 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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." Although there is evidence that the tenant gave the landlord written authorization at the end of this tenancy to retain \$50.00 from the

tenant's security deposit, section 38(4)(a) of the *Act* would only have allowed the landlord to retain \$50.00 from that security deposit past the 15-day period that commenced on July 3, 2018.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;...*

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit within the required 15 days. The tenant gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to \$447.50, an amount equivalent to the value of the security deposit owing to the tenant, as a result of the landlord's failure to abide by that provision of the *Act*.

Since the tenant has received that portion of the tenant's security deposit, \$447.50 which the landlord was required to return, I make no further order with respect to the tenant's security deposit. The tenant is not entitled to recover the \$50.00 cleaning fee from the landlord, as the tenant gave sworn testimony that he had given the landlord his written authorization to retain that portion of his security deposit.

Turning to the remainder of the tenant's claim, I find that the tenancy agreements between the parties for the first two one-year fixed term tenancies required the tenant to vacate the premises unless a new tenancy agreement was established. When each of the tenant's first two fixed term tenancy agreements ended the parties entered into new tenancy agreements. As such, and as the tenant willingly signed new tenancy agreements for new monthly rental charges, I dismiss the tenant's application for a monetary award for rent which the tenant maintained was overcharged by the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$447.50, under the following terms, which allows the tenant an award of double his security deposit, less the amount already returned to him, plus the recovery of his filing fee

| <b>Item</b>  | <b>Amount</b>   |
|--|-----------------|
| Return of Double Security Deposit as per section 38 of the <i>Act</i> ( $\$447.50 \times 2 = \$895.00$ ) | \$895.00        |
| Less Returned Portion of Security Deposit  | -447.50         |
| <b>Total Monetary Order</b>  | <b>\$447.50</b> |

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the tenant's application without leave to reapply.

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: October 26, 2018

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Residential Tenancy Branch