



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT/VILLA ROSALMA  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

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

The hearing was scheduled for teleconference at 1:30 p.m. on October 29, 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.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

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

### Background and Evidence

The Tenant testified that this tenancy began November 17, 2017 and ended on April 30, 2018.

Introduced in evidence was a copy of the move out condition inspection report confirming that the Tenant provided his forwarding address to the Landlord on the date of the inspection; namely: April 30, 2018. The report also indicated that no deductions were to be made to the Tenant's deposit.

The Tenant applied for dispute resolution on April 22, 2018: 8 days prior to the end of the tenancy.

The parties agreed that the Landlord provided the Tenant with his security deposit by cheque on May 2, 2018.

The Tenant testified that he did not cash the cheque as he was afraid it would "bounce". When asked if he had any reason to believe it would not be honoured he did not have any response.

The Landlord's Property Manager, E.T., also testified. She stated that to her knowledge the cheque which was sent to the Tenant for return of his security deposit was cashed, although she was not certain of this.

### Analysis

The Tenant applies for return of his security deposit pursuant to section 38(1) of the *Residential Tenancy Act* which reads 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.

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

I find that the tenancy ended on April 30, 2018. I also find that the Tenant provided his forwarding address to the Landlord on April 30, 2018, which is noted on the move out condition inspection report. As such, and pursuant to section 38(1), the Landlord had 15 days from April 30, 2018 in which to return the Tenant's security deposit.

I find that the Landlord provided the Tenant with a cheque for return of his deposit on May 2, 2018. As this was within the 15 days mandated by section 38(1), the Tenant is not entitled to double the deposit pursuant to section 38(6).

The Tenant claimed he did not cash the Landlord's cheque for return of his deposit as he was afraid it would bounce; there was insufficient evidence before me to support such a concern.

The Tenant applied for dispute resolution on April 22, 2018. He stated that he did so because he was informed the Landlord would not return his funds. The notations on the move out condition inspection report indicating the Landlord would not be making deductions to the deposit and the Landlord's actual return of the deposit on May 2, 2018 indicate otherwise.

Further, I find that the Landlord returned the Tenant's security deposit to him on May 2, 2018. The Tenant's failure, or unwillingness to cash the cheque from the Landlord, does not render this payment void. However, the Tenant was cautioned that cheques generally must be cashed within 180 days of issue such that it was imperative he cash the cheque as soon as possible.

I find that the Tenant's Application was made prematurely, as the Tenant is not entitled to return of his deposit until such time as the tenancy ends. I therefore dismiss his application for its return; this dismissal is granted with leave to reapply in the event the cheque issued on May 2, 2018 is not honoured.

### Conclusion

The Landlord issued a cheque to the Tenant within two days of the end of the tenancy and receipt of the Tenant's forwarding address. As such, the Landlord complied with section 38 of the *Act*.

The Tenant's Application for return of his security deposit is dismissed with leave to reapply (in the event the cheque dated May 2, 2018 is not honoured). The Tenant's Application for recovery of the filing fee is dismissed 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 29, 2018

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Residential Tenancy Branch