



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

On June 25, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled as a cross-application with another tenant’s Application (the file number is on the first page of this decision). This other Application involved a similar claim from a separate tenant seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act* and seeking recovery of the filing fee pursuant to Section 72 of the *Act*. These matters were set down at the same time on October 19, 2018 at 1:30 PM as both tenants lived in the same rental unit but had their own, separate tenancy agreements, also known as tenants in common. All parties agreed that both files would be heard during the same Dispute Resolution proceeding, but each file would be heard as separate matters. All parties agreed that the parties would stay connected to the teleconference call for both hearings.

The original file commenced at 1:30 PM and ended at 2:13 PM, and then this file commenced immediately following.

Both the Tenant and the Landlord attended the hearing. I.M. was in attendance as well from his hearing that commenced at 1:30 PM. All in attendance provided a solemn affirmation.

I find it important to note that during the previous hearing, the Landlord was cautioned multiple times regarding her disruptive behaviour and she was informed that any continued inappropriate behaviour would result in her participation being muted during the conference call.

The file listed on the first page of this decision had concluded at 2:13 PM and this file commenced immediately. The Landlord admitted that she was not familiar with her obligations under the *Act* with respect to dealing with the deposit and that this is how she has dealt with the security deposit with all her tenancies. The requirements of the *Act* with respect to Section 38 were explained to her multiple times for her benefit and understanding. However, she was adamant that how she dealt with the deposit was correct. She was then encouraged to contact the Residential Tenancy Branch for more information if she had questions with respect to these requirements.

The Landlord became increasingly hostile, as it was still her belief that she had returned a portion of the security deposit and acted appropriately in withholding a portion of the Tenant's security deposit without his written consent. She then challenged the tenants to attempt to collect any monetary award from her as she would not be paying either of them if they were awarded any compensation. She also made disparaging comments about the tenants. It was at this point that the Landlord was cautioned against further inappropriate outbursts; however, this behaviour continued. She was advised at 2:23 PM that her participation in the hearing would be muted and limited to being only able to listen to the remainder of the proceeding. The Landlord exited the conference call at 2:24 PM and the Dispute Resolution proceeding continued in her absence.

The Tenant advised that he served the Notice of Hearing package to the Landlord by Xpresspost on June 26, 2018 and he provided a tracking history to confirm service to the Landlord. As well, he advised and provided evidence that the address he mailed this package to was the Landlord's address on the tenancy agreement.

However, Section 89 of the *Act* requires that the Notice of Hearing package be served to the Landlord by registered mail. In the previous hearing regarding the file on the first page of this decision, the Landlord stated that she did not receive either tenants' Notice of Hearing package. As this Notice of Hearing package has not been served to Landlord in compliance with the requirements of Section 89 of the *Act*, I am not satisfied that the Landlord was served with the Tenant's Notice of Hearing package. As such, I dismiss the Tenant's Application with leave to re-apply.

As the Tenant was unsuccessful in his application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application with leave to re-apply.

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 22, 2018

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Residential Tenancy Branch