



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD

### Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

### Background and Evidence

This tenancy began on August 30, 2018 and ended on September 26, 2018. Monthly rent was set at \$875.00. The landlord had collected a security deposit in the amount of \$437.50 and a pet deposit of \$437.50 at the beginning of the tenancy, and has not returned any portion of the deposit to the tenants. AM testified that they only gave a week's notice to move out by text message as she felt the heating and fire safety of the building was insufficient. AM testified that she is a student and a better housing opportunity came up and she had to take it.

The tenants testified that he had provided the landlord with their forwarding address by e-mail, but the landlord disputes having received this. The tenants testified that they did not give permission for the landlord to retain any portion of his deposit. The landlord testified that the building has passed its fire code inspections, the boiler system is fully functional and that he had ordered a new window for the tenant. The landlord testified that the tenants did not provide proper notice ending the tenancy nor did they provide their forwarding address as required. The landlord testified that he lost two weeks of revenue as a result of the tenants' short notice.

### Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

As the tenants were unable to provide sufficient evidence to support that the landlord was provided with their forwarding address in writing, and as both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing. I informed the landlord that he had 15 days from the date of the hearing, February 13, 2019, to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

### Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply. The remaining portion of the tenant's application is dismissed with leave to reapply.

The tenant's forwarding address was confirmed during the hearing, and the landlord was informed that he had 15 days from the date of the hearing, until February 13, 2019 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

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: January 29, 2019

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Residential Tenancy Branch