



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 02, 2018 (the “Application”). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

J.X. was originally named as a tenant on the Application. J.X. appeared at the hearing. J.X. confirmed she had authority from the Tenant to appear on his behalf and make submissions on his behalf at the hearing. The Landlord appeared at the hearing with a friend to assist given a language barrier.

J.X. advised during the hearing that the Tenant is seeking return of double the security deposit if I find the Landlord breached the *Residential Tenancy Act* (the “Act”).

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started September 01, 2017 and was for a fixed term ending August 31, 2018. The Tenant paid a \$2,000.00 security deposit and no pet damage deposit. The agreement is signed by the Landlord and Tenant.

The parties agreed the tenancy ended August 31, 2018.

As stated, J.X. was originally named as a tenant on the Application. In the materials submitted, the Landlord raised the issue of J.X. not being a tenant. I asked the parties about this during the hearing. The Landlord testified as follows. J.X. is not a tenant. She only lived at the rental unit for a short time. She left earlier than the Tenant did. The Tenant then had a second individual come live with him. The Tenant did not have permission from the Landlord to have either J.X. or the second individual living at the rental unit.

I asked J.X. for her position on the above. She agreed that the Tenant was the only tenant on the tenancy agreement. She also agreed that she was not a tenant in relation to this tenancy.

Given the above, I told the parties I would remove J.X. as a tenant on the Application. I explained to the parties that J.X. is not a party to the proceeding but could continue to act as agent for the Tenant if she had authority and instructions to do so. J.X. confirmed she had authority and instructions to act for the Tenant and confirmed she wished to continue in the absence of the Tenant. The Landlord took issue with this; however, I explained that parties are permitted to have agents appear for them and that I was allowing J.X. to appear for the Tenant in the circumstances.

Both parties agreed that the Tenant did not provide his forwarding address in writing to the Landlord at the end of the tenancy.

### Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to dealing with a security deposit held at the end of a tenancy. Section 38(1) states:

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.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Tenant has not provided the Landlord with his forwarding address in writing and therefore section 38(1) of the *Act* has not been triggered. I note that providing an address on the Application is not sufficient to trigger section 38(1) of the *Act*.

Given the Tenant did not provide the Landlord with his forwarding address in writing prior to filing the Application, the Application is premature. I dismiss the Application with

leave to re-apply. This does not extend any time limits set out in the *Act*. I decline to award the Tenant reimbursement for the filing fee in the circumstances.

I asked J.X. to confirm the Tenant's forwarding address during the hearing; however, she was unable to do so and asked that the Tenant be permitted to provide it after the hearing. In the circumstances, no forwarding address was confirmed during the hearing. If the Tenant wishes to have the security deposit returned, he will have to provide his forwarding address to the Landlord in accordance with the *Act*.

I told the parties that they could call the RTB and speak to an Information Officer if they require assistance or have any questions in relation to this issue moving forward.

### Conclusion

The Application is premature and is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 04, 2019

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Residential Tenancy Branch