



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD FFT

### **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.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. Neither party submitted written evidence for this hearing.

### **Background and Evidence**

This fixed term tenancy began on April 1, 2018, and ended on January 12, 2019. The landlord had collected a security deposit in the amount of \$850.00 at the beginning of the tenancy, and continues to hold this deposit.

The tenant testified that he had provided the landlord with his forwarding address by placing it in the landlord's mail box on January 12, 2019, the same date he had moved out. The landlord disputes the fact that he had ever received the tenant's forwarding address in writing.

## **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.

The tenant has applied for the return of the security deposit. There is conflicting evidence regarding whether the tenant's forwarding address was provided in writing to the landlord. Although the tenant maintained that he had placed the forwarding address in the landlord's mailbox, the landlord provided sworn testimony that this forwarding address was never received. The tenant did not call any witnesses at this hearing, nor did he provide any signed proof of service to support his claim. In light of the conflicting testimony, and in light of the fact that the tenant did not call any witnesses, or provide some form of supporting documentation to show that the landlord was indeed served on January 12, 2019, I find that the tenant has not provided sufficient evidence to support his claim that the landlord was provided with his forwarding address in writing.

The tenant's application for the return of his security deposit and compensation in relation to section 38 of the *Act* is dismissed with leave to reapply.

As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties that today's date, May 16, 2019, serves as the date that the landlord was served with the tenant's forwarding address, and that that the deposits must be dealt with in accordance with section 38 of the *Act*.

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 the tenant was not successful with his application, the tenant must bear the cost of this filing fee.

## **Conclusion**

The tenant's application in relation to his security deposit under section 38 of the *Act* 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 to deal with the deposit in accordance with section 38 of the *Act*.

The tenant's application to recover the filing fee was 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: May 16, 2019

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Residential Tenancy Branch