



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

In this dispute, the tenant seeks compensation under section 67 of the *Residential Tenancy Act* (the “Act”) for one month’s equivalent of rent at the end of his tenancy, for the return of his security deposit, and, for recovery of the filing fee.

The tenant applied for dispute resolution on February 18, 2019 and a dispute resolution hearing was held on June 7, 2019. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of evidence.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

### Preliminary Issue: Landlord’s Concession to Claim for One Month’s Rent

The landlord accepted the tenant’s claim for one month’s rent, pursuant to sections 51(1) and 67 of the Act. As such, I need not consider this aspect of the tenant’s claim further, and any monetary order issued shall include the claimed amount of \$1,600.00.

### Issues

1. Whether the tenant is entitled to the return of his security deposit, pursuant to section 38 of the Act.
2. Whether the tenant is entitled to recovery of the filing fee, pursuant to section 72(1) of the Act.

### Background and Evidence

The tenant (who was a co-tenant prior to July 1, 2018) signed a new tenancy agreement and entered into a new tenancy commencing July 1, 2018. Monthly rent was \$1,600.00 and the tenant paid a security deposit of \$800.00 and a pet damage deposit of \$500.00. The landlord currently holds the security deposit in trust but has returned the pet damage deposit. A copy of a written tenancy agreement was submitted into evidence.

On February 1, 2019, the tenant moved out and on February 3, 2019 the parties conducted a final move-out inspection. A copy of a completed Condition Inspection Report (the "Report") was submitted into evidence. The tenant testified that he signed the Report, and that he provided his forwarding address to the landlord by including the forwarding address in the Report. There did not appear to be any written agreement by which the tenant consented to the landlord retaining his security deposit.

The parties were unable to resolve the damages claimed by the landlord, and as such sought resolution through the dispute resolution process.

The landlord testified that the tenant did not provide his forwarding address in the Report, and that the first time he received the tenant's forwarding address was in the Notice of Dispute Resolution Proceeding package.

Both parties spoke at length about the alleged damage and repairs to the rental unit. However, as this is not the landlord's claim for compensation or a claim against the security deposit, I need only address the procedures followed regarding the retention or return of the security deposit. I will not address or recite testimony regarding the alleged or actual damages.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the

security deposit or pet damage deposit. Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, 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.

In this case, despite the tenant's testimony that he provided his forwarding address to the landlord by writing it down in the Report, I have looked at the Report and nowhere in the Report does the tenant's forwarding address appear. The "Tenant's Forwarding Address" section on page 3 of the Report is blank.

Based on the testimony and evidence before me, I find on a balance of probabilities that the tenant had not provided his forwarding address to the landlord as is required under section 38(1) of the Act at the end of the tenancy. Moreover, a forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and is not deemed as providing the landlord with the tenant's forwarding address.

Pursuant to *Residential Tenancy Branch Directive 2015-01*, the landlord shall be considered to have received the tenant's forwarding address on the date that he receives this decision. The tenant's Address for Service of Documents as it appears on the Notice of Dispute Resolution Proceeding shall be considered the tenant's forwarding address.

Upon receiving this decision, the landlord will then have 15 business days to (1) repay the security deposit of \$800.00 to the tenant, or (2) apply for dispute resolution claiming against the security deposit. As noted above, as this application is not a claim for compensation by the landlord, I am unable to order that the landlord retain any portion of the security deposit.

As the tenant was partially successful in his application I grant him partial recovery of the filing fee in the amount of \$50.00, pursuant to section 72(1) of the Act. This amount will be added to the monetary award of \$1,600.00 noted above.

### Conclusion

I grant the tenant a monetary order in the amount of \$1,650.00, which must be served on the landlord pursuant to section 88 of the Act. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims Court).

I order that the date on which the landlord receives this decision shall be the date on which the tenant has provided his forwarding address to the landlord for the purposes of section 38(1) of the Act. The landlord must then exercise his obligations under section 38 regarding the security deposit within 15 days.

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: June 7, 2019

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Residential Tenancy Branch