



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      MNSD MNDCT 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;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

JH ("landlord") testified on behalf of the landlord in this hearing. 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.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

### **Preliminary Issue: Landlord's Evidence**

The landlord testified that he was unable to serve the tenant with his evidentiary materials as they were not in possession of the tenant's address at where he resides. The landlord confirmed in the hearing that the tenant did provide him with his forwarding address, but because the landlord believed this to be a different address than the one where the tenant resides, the landlord had used another address that they had found.

The tenant confirmed that the forwarding address initially provided to the landlord was correct, and still valid.

Section 88(1) of the *Act* establishes how documents may be served:

#### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the

person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71

(1) *[director's orders: delivery and service of documents]*;

(j) by any other means of service prescribed in the regulations.

Although the landlord was provided a forwarding address by the tenant, the landlord did not use this address for service of their evidentiary materials. I find that the tenant was not served with the landlord's evidentiary materials in a manner required by the *Act*, and accordingly, the landlord's evidentiary materials were excluded for the purpose of this hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

The tenant testified that this tenancy began on June 20, 2018, while the landlord testified that the tenancy had begun on July 1, 2018. The landlord testified that there was a written tenancy agreement, although neither party had submitted a copy for this hearing.

Monthly rent was set at \$500.00, payable on the first of the month. The landlord had collected a security deposit in the same amount, which the landlord still holds.

Both parties confirmed that the tenant had provided the landlord with a forwarding address on April 23, 2019, and had moved out on April 26, 2019. The tenant testified

that he had requested the return of his security deposit, but the landlord failed to return it to him. The landlord testified that they wanted to apply for dispute resolution within 15 days to retain the deposit as they felt the tenant failed to give proper notice in ending this tenancy. The landlord kept the security deposit in satisfaction of the losses related to this tenancy. The landlord testified that they did not feel confident that the forwarding address provided by the tenant was a proper address, and this is why they had waited to file an application. The landlord could not provide the file number of their application or details of when the application was filed, but believe it was filed approximately 15 days before this scheduled hearing.

The tenant is seeking a monetary order for the following items:

<b>Item</b>	<b>Amount</b>
Return of security deposit	\$500.00
Compensation for landlord's failure to comply with section 38	500.00
Damage to Piano	100.00
Reimbursement of rent for April 27-30, 2018	66.70
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$1,266.70</b>

The tenant is seeking \$100.00 for damage to the piano, which the landlord disputes was caused by them. The tenant is also seeking reimbursement of the April 2018 rent as they moved out before the end of the month, and is therefore seeking a reimbursement for the remaining days.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an

amount from a security or 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.”

I am satisfied that the tenant had provided a forwarding address as required by section 38 of the Act, but the landlord had failed to make any attempts to return the tenant's deposit to that address, or file an application for dispute resolution with 15 days of the end of this tenancy. The landlord had not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the Act, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit.

I note that in collecting the security deposit, the landlord had required that the tenant pay a security deposit equivalent to 100 percent of the rent, which is prohibited under section 19 of the Act as stated below. The landlord was reminded of this limit in the hearing for future reference.

### **Limits on amount of deposits**

**19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

The tenant had requested compensation for damage to the piano, which the landlord disputes. I find that the tenant failed to provide sufficient evidence to support that this damage was strictly due to the landlord's actions. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

The tenant also applied for reimbursement of the April 2019 rent for the remaining days of the tenancy.

Section 45(1) of the *Act* sets out how a tenant may end a periodic tenancy.

### Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant chose to move out before April 30, 2019, which is the last day in the month before the rent is payable. As I find that this tenancy had ended on April 26, 2019 because the tenant moved out early, and not directly as a result of the landlord's actions, I dismiss the tenant's application for reimbursement of the rent for April 27, 2019 through to April 30, 2019.

As the tenant was only partially successful in their application, I allow the tenant to recover half of the filing fee for this application.

### Conclusion

I issue a **\$1,050.00** Monetary Order in the tenant's favour as set out below

Item	Amount
Return of security deposit	\$500.00
Compensation for landlord's failure to comply with section 38 of the <i>Act</i>	500.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,050.00</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to

comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portion of the tenant's application is 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: August 23, 2019

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Residential Tenancy Branch