



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      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 her security deposit pursuant to section 38.

Both parties attended the hearing via conference call and provided testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 7, 2019. The tenant has submitted a copy of the Canada Post Customer Receipt and Tracking Label as confirmation. The tenant confirmed that the package was returned by Canada Post. The landlord argued that no such package was received and that she received an email advising her of an evidence deadline. As such, the landlord called the Residential Tenancy Branch to obtain more information and was given the details of the application and the call in details. The tenant stated that the address on file was provided by B. an individual who works for the registered owner of the property. The landlord disputed that this was her address and provided a different one. The tenant stated that she did nothing to confirm the address of the landlord and was not aware of any other address for the landlord. However, the landlord stated in her direct testimony that she was prepared to proceed with the hearing. The landlord confirmed she was able to proceed with the hearing. Although the landlord was not properly served, I find that as the landlord has attended and is able to proceed, the hearing shall commence.

During the hearing the landlord provided and confirmed her mailing address and as such, the Residential Tenancy Branch File shall be updated to reflect this address.

### Preliminary Issue(s)

At the outset, the landlord argued that the Residential Tenancy Act did not apply as the rental is shared accommodations. The tenant confirmed that she shared a room with another tenant. The landlord confirmed that the tenant shared the room with another occupant and that the landlord did not live at this address. The landlord confirmed that the tenant paid rent to her and that the landlord received a \$225.00 security deposit from the tenant. Both parties were informed that based upon the evidence provided that the Act does apply. The landlord's dispute that the Act does not apply is dismissed. The landlord indicated her understanding and that she was prepared to go ahead.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$225.00 for return of the security deposit. Both parties confirmed the tenant paid the landlord a \$225.00 security deposit.

The tenant stated that there is no signed tenancy agreement but that the tenancy began on October 25, 2018 and ended on April 1, 2019. The landlord confirmed these details. The tenant stated that she provided her forwarding address in writing to the landlord in a letter on April 17, 2019 by mailing it to the landlord via Canada Post Regular Mail. The landlord disputed this claim stating that no letter with the tenant's address had been received. The tenant stated that she does not have any proof of service.

The tenant has argued that numerous attempts at getting a mailing address from the landlord were unsuccessful despite multiple emails and text messages. The landlord argues that at no time has the tenant provided her forwarding address in writing for return of the security deposit. The landlord stated that she was willing to return the tenant's security deposit.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in

writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the evidence of both parties that the tenancy ended on April 1, 2019 and that the landlord currently holds the \$225.00 security deposit paid by the tenant. The landlord does not have the tenant's consent to retain it nor has the landlord applied for dispute of its return.

I also find that the tenant has failed to provide sufficient evidence that the landlord was served with the tenant's forwarding address in writing for return of the security deposit. The tenant has claimed that a letter was sent on April 17, 2019, which is disputed by the landlord. The tenant is unable to provide any supporting evidence of proof of service. On this basis, I find that tenant has failed to provide sufficient evidence to initiate the return of the security deposit by the landlord.

On this basis, I find that the tenant is entitled to return of the original \$225.00 security deposit. The tenant's application is granted.

### Conclusion

The tenant is granted a monetary order for \$225.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: September 13, 2019

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Residential Tenancy Branch