



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT, 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 their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*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.

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 parties confirmed that they had exchanged their documentary evidence.

### Issues to Decide

Are the tenants entitled to the return of double their security deposit as a result of the landlord failing to comply with section 38 of the *Act*?

Are the tenants entitled to the recovery of the filing fee for this application from the landlord?

### Background and Evidence

The tenant gave the following testimony. This one-year fixed term tenancy began on September 22, 2018 but ended early on May 19, 2019. Monthly rent was set at \$1150.00. The landlord had collected a security deposit in the amount of \$575.00 at the beginning of the tenancy. The tenant testified that he was responsible for 50% of the

water and hydro bills. The tenant testified that he agreed that the landlord could retain a portion of the security deposit to cover the utility costs. The tenant testified that he did not receive his deposit within 15 days of moving out and should be entitled to the return of double the deposit.

The landlord gave the following testimony. The landlord testified that the tenant advised them that they could hold the deposit until the utility bill came and to apply a portion of the security deposit to the cost and return the remainder. The landlord testified that she followed the tenant's instructions and is confused as to why he filed this application. The landlord testified that she e-transferred the deposit minus \$88.86 for utilities the same day the utility bill came. The landlord testified that the tenant broke the lease early and did not provide their forwarding address in writing at anytime. The landlord testified that the first time they received the tenants forwarding address was when they received the Notice of Hearing documents; three days after they had returned the deposit.

### 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 did not dispute the landlord's testimony that they only received the tenants forwarding address when they received notice of this hearing. As the tenant was unable to provide sufficient evidence to support that the landlord was provided with his forwarding address in writing prior to serving the notice of hearing documents and application, the doubling provision does not apply as the tenant has not satisfied me that they carry out their obligations under section 38(1)(b) of the *Act*. The tenant confirmed he received the deposit minus the \$88.86 he owed for utilities. Based on the above I find that the tenant has already received what he is entitled to and that no further monetary award is merited.

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. I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application as they have not been successful in this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application is dismissed in its entirety 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: September 26, 2019

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Residential Tenancy Branch