



# 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 an application submitted on August 18, 2019 by the tenant under the *Residential Tenancy Act* (the Act) for an order for the landlord to return the security deposit, pursuant to section 38 of the Act.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution. The landlord confirmed receipt of the tenant's application package. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the tenant's application package.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary issue – exclusion of evidence

The tenant submitted into evidence a document named 'Proof Address Was Provided – Letter to landlord giving new address handed to him in person'.

The tenant testified this document was personally delivered to the mother of the landlord on July 31, 2019. The tenant does not know the name of the mother of the landlord.

The tenant testified that when he sent the dispute resolution application package to the landlord, this document was not included.

Rule of procedure 3.14 states:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital

evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Per Rule 3.17 I am excluding this document from consideration as the landlord denies having received it.

### Issue to be Decided

Is the tenant entitled to an order for the landlord to return double the security deposit, pursuant to section 38 of the Act?

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below.

There is no written tenancy agreement.

The tenant testified:

- He moved in to the rental suite on March 01, 2019. Monthly rent was \$1,000.00, due during the last week of the previous month. A security deposit of \$500.00 was collected by the landlord on February 25, 2018;
- He moved out on July 28, 2019, the landlord still holds the \$500.00 security deposit;
- He personally delivered a letter to the mother of the landlord on July 31, including his forwarding address and a request to receive the security deposit;
- All the payments throughout the tenancy were in cash, as the landlord did not accept cheques;
- The landlord did not provide receipts for any payments;
- He always dealt with landlord SC;
- He received several text messages from the landlord during the tenancy;
- He went to India from November or December 2018 to April 2019. During this time, his wife resided in the rental suite and paid rent;
- After he returned from India, the landlord asked to increase the rent to \$1,300.00;

- On July 29, 2019, when he was backing up his car on the landlord's driveway, he damaged the landlord's car.

The landlord testified:

- He is not the owner of the house and never dealt with the tenant;
- He never had a tenancy agreement with the tenant, and did not receive any payment from him;
- He lived in the upper unit of the same address when the tenant was living there;
- He would only communicate eventually with the tenant when they were leaving the house at the same time;
- The tenant always dealt with his brother JSC, his sister-in-law MC and his father JPC (the names have been included on the front page of this decision);
- The only document he received from the tenant was the notice of hearing;
- He does not know the tenant's forwarding address;
- He sent a text message to the tenant once, informing him of the house address, using JSC's cell phone, because at the time JSC was sick at home.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

The parties offered conflicting verbal testimony regarding whether or not there was a tenancy and whether the landlord collected a security deposit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The applicant did not provide any documentary evidence to support his claim. The applicant did not call any witnesses.

I have carefully reviewed the testimony offered by both parties, and I find that the tenant has not provided sufficient evidence of paying the landlord a \$500.00 security deposit which the landlord continues to hold in trust. Therefore, I dismiss the tenant's application.

Conclusion

I dismiss the tenant's application 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: December 13, 2019

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Residential Tenancy Branch