



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FFT

### Introduction

In this dispute, the tenant sought the return of his security deposit under section 38 of the *Residential Tenancy Act* (the “Act”) and recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on August 29, 2019 and a dispute resolution hearing was held on December 16, 2019. The tenant and the landlords attended the hearing, and they were given a full opportunity to be heard, to testify, to make submissions, and to call witnesses. No issues of service were raised by the parties.

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.

### Issues

1. Is the tenant entitled to the return of their security deposit?
2. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenant testified that the tenancy started on January 1, 2019 and ended when he moved out on July 31, 2019. On December 20, 2018 the tenant provided a \$300.00 security deposit to the landlords, who retained the deposit. There is no pet damage deposit. Monthly rent was \$750.00, later increased to \$800.00, but of which the tenant paid on a weekly basis. There was no written tenancy agreement; the landlords said that they preferred to operate on “a more casual rental” basis and on an honour system. The tenant gave the landlords one day’s notice that he was vacating the rental unit, and other than returning briefly on August 1, 2019 to collect some personal items, was gone

on July 31. He testified that the first time the landlords were provided with his forwarding address in writing was by way of the Notice of Dispute Resolution Proceeding package. This package was sent to the landlords shortly after August 29, 2019.

The tenant seeks the return of his security deposit of \$300.00 and commented that “the lady [living] beside me got into BC Housing and she got her damage deposit back [right away].”

The landlords testified that there was never any discussion with the tenant about the landlords returning the security deposit. Rather, it was in fact the tenant’s idea that – because he’d only given the landlords a day’s notice to end the tenancy – the landlords could keep the security deposit.

Regarding the rent, the landlord explained that the rooms (of which the rental unit was one) are rented for \$900.00 a month, but that the rent was initially lowered to \$800.00 to help the tenant out. Finally, the landlord confirmed that the first time the landlords received the tenant’s forwarding address in writing was with the Notice of Dispute Resolution Proceeding and accompanying documents.

Both parties confirmed, in response to my questioning, that no Condition Inspection Report was completed either at the start or end of the tenancy. Finally, both parties commented on each other’s being “good landlords” and “a good tenant,” with no apparent animosity or ill-will.

### 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. Here, the onus is on the tenant to prove that he is owed the return of the security deposit.

Section 38 of the Act deals with the return of security and pet damage deposits. It is highly procedural in nature and requires that a tenant and landlord follow very strict steps within specific deadlines. And, while I appreciate that the parties preferred to keep business casual, to operate on an honor system and to make agreements orally, the Act does not recognize or take into account these methods for conducting business. Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date a landlord receives a 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.

In this case, the landlords did not receive the tenant's forwarding address in writing until they received it by way of the Notice of Dispute Resolution Proceeding. This unique circumstance activates *Residential Tenancy Branch Practice Directive 2015-01* ("Directive 2015-01"), which states that

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 should not be deemed as providing the landlord with the forwarding address.

Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

Directive 2015-01 prohibits me from making an order for the return of a security deposit based on the date of the application for dispute resolution. As such, and pursuant to Directive 2015-01, the landlords will have been deemed to have received the tenant's forwarding address on the date that they receive this Decision. In the meantime, the tenant's application for dispute resolution is dismissed with leave to reapply, should it be necessary.

The landlords will have 15 days from the date that they receive this Decision to either (A) return the security deposit in full to the tenant, or (B) file an application for dispute resolution claiming against the security deposit.

Should the landlords not return the security deposit or file an application for dispute resolution, the tenant is at liberty to file a new application for dispute resolution, including seeking a doubling of the amount pursuant to section 38(6) of the Act. The landlords have 15 days to decide what to do with the security deposit.

### Conclusion

I order that the landlords are deemed to have received the tenant's forwarding address in writing on the date that one or both of the landlords receive a copy of this Decision, for the purposes of section 38(1) of the Act.

I dismiss the tenant's application with 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 Act.

Dated: December 16, 2019

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Residential Tenancy Branch