



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to an application and an amended application made December 30, 2019 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. The Landlord confirms that the Landlord’s email as set out on the Tenant’s application is correct.

### Preliminary Matter

The Landlord states that the Tenant has only claimed return of a portion of the security deposit and that it did not receive the Tenant’s amendment setting out the claim for return of double the full security deposit. The Tenant confirms that although it sent the amendment by registered mail, it was recently notified that this mail was not delivered due to a postal company error. As the Tenant’s claim for return of the security deposit has been dismissed with leave to reapply as set out below, it is not necessary to make any decisions in relation to the matter of the amendment and the amount being claimed.

### Issue(s) to be Decided

Has the Landlord received the Tenant’s forwarding address?

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Relevant Background and Evidence

The tenancy under written agreement started on November 9, 2018 and ended on August 9, 2019. At the outset of the tenancy the Landlord collected \$1,975.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report. The Tenant has not provided written authorization for the Landlord to retain the security deposit. The Landlord has not returned the security deposit and has not made an application for dispute resolution to claim against the security deposit.

The Tenant states that it provided its forwarding address in writing to the Landlord in a signed letter attached to an email dated July 9, 2019. The Tenant states that this email was contained in an email thread between the Parties. The Tenant describes that thread. The Tenant confirms that this thread was not included as evidence. The Landlord states that they had problems receiving the Tenant's email and were unable to open the attachment. The Landlord states that the Tenant was repeatedly asked by email for his forwarding address with no response. The Tenant states that at no time did the Landlord say they did not receive his emails and said nothing about email problems. The Landlord provides an email dated September 23, 2019 stating, "I have requested on three occasions a forwarding address, which you have failed to reply."

The Tenant confirms that its current forwarding address is set out in the Tenant's application.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. The Tenant must prove that the Landlord

received the forwarding address not solely that the Tenant sent the address. The Tenant only provided evidence that it sent its forwarding address by email as an attachment. The Tenant did not provide any email reply from the Landlord as supporting evidence that the Landlord received the forwarding address. While the Landlord may have received the email dated July 9, 2019, there was nothing in the email body or heading setting out a forwarding address and it is undisputed that the Landlord was unable to open the letter attachment containing the forwarding address. Further I consider the Landlord's email dated September 23, 2019 as supporting the Landlord's evidence that no forwarding address was received by the Landlord. For these reasons I find that the Tenant has not provided sufficient evidence to support that the Landlord received the Tenant's forwarding address prior to the making of its application.

As the Landlord now has the Tenant's confirmed forwarding address as set out on the Tenant's application, I find that the Landlord has now received the Tenant's forwarding address in writing. The Landlord has 15 days from the date of receipt of this decision to deal with the security and pet deposit as required under the Act. As the Tenant did not provide the forwarding address prior to making its application I dismiss the claim for its return with leave to reapply should the Landlord fail to deal with the deposit as required. As the Tenant has not been successful with its claim, I dismiss the claim to recover the filing fee.

### Conclusion

The Tenant's claim for return of the security deposit is dismissed 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: January 21, 2020