



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AL STOBBER CONSTRUCTION LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord LME ("landlord") and "landlord LMA" and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that she was the property manager and that landlord LMA was the building manager and that both agents had permission to represent the landlord company named in this application. This hearing lasted approximately 11 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

### Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary 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 claims and my findings are set out below.

Both parties agreed to the following facts. The tenant did not move into the rental unit, but her tenancy was to begin on October 1, 2019, as per the written tenancy agreement signed by both parties. A security deposit of \$892.50 was paid by the tenant and the landlord continues to retain this deposit. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant did not provide written permission to the landlord to retain any amount from her security deposit. The landlord did not file an application to retain any amount from the security deposit. The tenant did not provide a written forwarding address to the landlord. The landlord received the tenant's address to serve documents for this hearing, from the tenant's application.

The tenant seeks a return of \$642.50 from her security deposit of \$892.50. She said that the landlord charged a \$250.00 fee for not renting the unit, so she deducted this amount from her original deposit. She also seeks to recover the \$100.00 filing fee for this application. She claimed that she did not provide a forwarding address to the landlord because the landlord told her that she would not be returning her security deposit.

The landlord disputes the tenant's application, claiming that the tenant's security deposit was retained because the landlord was unable to re-rent the unit since the tenant only provided one week's notice that she would not be moving in. She said that she was waiting for this hearing to determine the security deposit and that is why the landlord did not file an application to retain it.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously

ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenant did not provide a specific document to the landlord indicating a forwarding address for the return of her security deposit. Therefore, I find that the tenant did not provide a written forwarding address in accordance with section 88 of the *Act*. The tenant's application for dispute resolution does not satisfy the requirement for section 88 of the *Act*.

The tenant did not confirm her forwarding address to the landlord during this hearing or indicate whether the address in her application was still current as of the date of this hearing. I order the tenant to provide a written forwarding address to the landlord in accordance with section 88 of the *Act*. The landlord then has 15 days after receiving that forwarding address from the tenant, to either return the security deposit in full or to file an application for dispute resolution. If the landlord does not complete either of the above actions within the above deadline, the tenant may reapply for the return of her security deposit in accordance with section 38 of the *Act*. Accordingly, the tenant's application for the return of her security deposit is dismissed with leave to reapply.

Since the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I order the tenant to provide a written forwarding address to the landlord in accordance with section 88 of the *Act*. The landlord has 15 days after receiving that forwarding address from the tenant, to either return the security deposit in full or to file an application for dispute resolution.

The tenant's application to obtain a return of the security deposit is dismissed with leave to reapply.

The tenant's application to recover the \$100.00 filing fee is dismissed 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: January 28, 2020