



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNSD, MNDCT

### 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 unpaid rent and 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 each others documentation.

### Preliminary Issue- Amendment to Application

The tenants advised that in addition to seeking the return of double the security deposit, filing fee and some rental overpayment, they were seeking the 12 months of rent as compensation pursuant to section 51 as a result of a notice issued pursuant to section 49 of the Act. The tenant testified that they had amended their application to reflect this change, however the landlord only received it on January 13, 2020. Residential Tenancy Branch Rules of Procedure 4.6 addresses this as follows:

#### **4.6 Serving an Amendment to an Application for Dispute Resolution**

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by

the applicant in a manner required by section 89 of the *Residential Tenancy Act* or section 82 of the *Manufactured Home Park Tenancy Act* and these Rules of Procedure. The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Based on the above, I hereby dismiss the tenants request for 12 months rent as compensation with leave to reapply. This was explained to both parties and both indicated that they understood.

### Background and Evidence

This tenancy began on July 3, 2017 and ended on August 10, 2019. Monthly rent was set at \$850.00. The landlord had collected a security deposit in the amount of \$425.00 at the beginning of the tenancy and has not returned any portion of the deposit to the tenant.

MP testified that she had provided the landlord with her forwarding address by registered mail in August 2019 as well gave a copy of the letter to the property manager at that time. RJ disputes having received this letter from the tenant or from the property manager. AP testified that JL herself has two pending hearings against the landlord and her testimony cannot be relied upon.

### 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 provide copies of the registered mail receipt and was unable to provide the tracking numbers to corroborate her testimony. JL gave unclear and unreliable testimony as she was unsure if she had given the tenants forwarding address to the landlord or when.

As the tenants were unable to provide sufficient evidence to support that the landlord was provided with their forwarding address in writing, and as both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing. I

informed the landlord that he had 15 days from the date of the hearing, February 5, 2020, to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

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. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

### Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply. The remaining portion of the tenant's application is dismissed with leave to reapply which also includes the return of any pro-rated rent the tenant seeks.

The tenant's forwarding address was confirmed during the hearing, and the landlord was informed that he had 15 days from the date of the hearing, until February 5, 2020 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

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 21, 2020

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Residential Tenancy Branch