



# 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 as a result of the Tenant's Application for Dispute Resolution, dated September 19, 2017 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order compelling the Landlord to return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf, as did the Landlord. The Tenant testified that their Application package, which included the Notice of a Dispute Resolution Hearing and the Tenant's evidence was served on the Landlord by registered mail and sent to the landlord by email, which the landlord acknowledged receiving. Pursuant to Sections 89 and 71(2)(c) of the Act I find the Landlord was duly served with the Tenant's Application and evidence package.

The Landlord submitted documentary evidence to this proceeding, however failed to send the same evidence to the tenant, claiming the tenant was already in possession of the pertinent information.

The parties were given an opportunity to mutually resolve their dispute to no avail. The parties had opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issues to be Decided**

Is the Tenant entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?

Is the Tenant entitled to an order granting recovery of the filing fee?

### **Background and Evidence**

The parties confirmed the tenancy began in September 2017 and ended when the Tenant vacated the rental unit July 30, 2019. At the outset of the tenancy the landlord collected a security and pet damage deposit in respective amounts of \$3750.00, of which the landlord currently still holds the security deposit of \$3750.00 in trust.

The Tenant applied for an order that the Landlord return the security deposit in its entirety. The Tenant testified and provided evidence that at the end of the tenancy they provided the Landlord with bank transfer particulars to receive their security deposit, however, acknowledged that at the end of the tenancy had not provided their forwarding address in writing, however that the landlord should have known of their address in Germany from communications before entering the tenancy. The Landlord acknowledged receiving the Tenant's forwarding address when they received the Tenant's Application of this matter.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find as follows.

**Section 38(1)** of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. It is receipt of the Tenant's forwarding address in writing that triggers the Landlords obligation to then deal with the security deposit in accordance with section 38 of the *Act*. Pursuant to the *Act*, if the parties do not agree as to the administration of a deposit, the landlord is not obligated to act on administering the deposit until they receive a forwarding address in writing.

Further, it must be known that **Section 38(6)** states that, if a landlord does not comply with **section 38(1)**, the landlord may not make a claim against the security deposit or pet damage deposit and *must pay the tenant double the amount* of any deposit in trust.

In this case, I find there is insufficient evidence before me that the Tenant provided his forwarding address to the Landlord in writing in accordance with the *Act*. Accordingly, It is my Decision that the Tenant's Application must be dismissed, with leave to reapply if the Landlord does not deal with the security deposit in accordance with Section 38 of the *Act*, as follows.

The Landlord and Tenant were advised during the hearing that, pursuant to **Section 71(2)(b)** of the *Act*, they are deemed to have received the Tenant's forwarding address in writing on the date of this Decision, which was confirmed in the hearing. The Landlord must now deal with the security deposit in accordance with Section 38 of the *Act*. That is, **within 15 days after the date of this Decision** (or February 05, 2020), the Landlord must either return the security deposit in its entirety to the Tenant at the address provided on the Tenant's Application and confirmed in the hearing, or make a claim against the security deposit by filing an application for dispute resolution with the Residential Tenancy Branch. Failure to do so may result in the Landlord being prevented from making a claim against the security deposit, and the Tenant being awarded double the amount of the security deposit at a future hearing.

### **Conclusion**

The Tenant's Application is dismissed, *with leave to reapply* should the Landlord not deal with the security deposit in accordance with Section 38 of the *Act*, as articulated above.

**This Decision is final and binding.**

*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