



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT MNSD FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) by the tenant for a monetary order in the amount of \$2,100.00 for the return of double their security deposit, plus money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

Neither party raised any concerns regarding the service of documentary evidence. The parties confirmed that they had the opportunity to review the evidence service upon them prior to the hearing. I find the parties were sufficiently served as required by the Act.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matter

The parties confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

### Issues to be Decided

- Is the tenant entitled to a monetary order under the Act and if so, in what amount?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The parties confirmed that a written tenancy agreement did not exist between the parties, which I will address later in this decision. The parties agreed that a verbal tenancy was formed and began on August 1, 2019. The parties agreed that the tenant vacated the rental unit on September 1, 2019. The tenant testified that they provided their 10 day written notice to end the tenancy dated August 22, 2019 (10 day notice) after having received a 2 Month Notice to End the Tenancy for Landlord's Use of Property.

The tenant provided a copy of their 10 day notice in evidence. On the 10 day notice the tenant provided an incomplete written forwarding address, which is missing the city, province and postal code. The parties agreed that the landlord has returned \$370.81 of the tenant's \$700.00 security deposit. The landlord submitted a document, which indicates that they withheld \$329.19 of the tenant's security deposit for carpet cleaning, changing of locks and damages. The landlord testified they did not have the written permission of the tenant to retain any amount of the \$700.00 security deposit. The landlord also confirmed that they have not submitted a claim against the tenant towards their security deposit.

### Analysis

Based on the testimony, documentary evidence, and on a balance of probabilities, I find the following.

Firstly, I will deal with the lack of a written tenancy agreement. Section 13(1) of the Act applies and states:

#### **Requirements for tenancy agreements**

**13(1)** A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Based on the above, I find the landlord breached section 13(1) of the Act. Therefore, I **caution** the landlord to ensure that all future tenancy agreements are in writing.

Secondly, section 38 of the Act states:

**Return of security deposit and pet damage deposit**

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the above, I find the tenant failed to properly serve their full written forwarding address to the landlord. I have reached this finding as the tenant failed to provide the city, province and postal code, which is the fault of the tenant and not the landlord. Therefore, I dismiss the tenant's application for the return of double the security deposit, due to insufficient evidence, without leave to reapply.

While there is no dispute that the landlord has returned \$370.81 of the tenant's \$700.00 security deposit, I find the landlord had no authority to retain the remaining \$329.19 of the tenant's security deposit as the landlord confirmed they did not have written permission of the tenant and has not made an application to claim against the tenant's security deposit.

Therefore, I find that as of the date of this decision, January 28, 2020, the landlord has received the tenant's full written forwarding address, which has been included on the cover page of this decision for ease of reference.

**I ORDER** the landlord to return the tenant's remaining security deposit balance of **\$429.19**, which includes the \$100.00 filing fee, which I will address below, within 15 days of the receipt of this decision.

The tenant has been granted the filing fee as the tenant had to apply for dispute resolution for the return of their security deposit. This decision is made pursuant to section 72 of the Act. Should the landlord fail to comply with my order, I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$429.19**, which will be of no force or effect if the landlord pays the tenant as ordered above.

### Conclusion

The tenant's application for double the return of the security deposit is dismissed.

The landlord has been ordered to pay the tenant \$429.19 as indicated above.

The decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord if necessary. Should the tenant required enforcement of the monetary order, it must be served on the landlord by the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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

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Residential Tenancy Branch