



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On October 25, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to request the return of the security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before 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

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of his security deposit, pursuant to section 38 of the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The testimony of both parties was that the tenancy began on July 1, 2016, and that rent in the amount of 900.00 was due by the first day of each month. The parties agreed that the Tenant paid a \$400.00 security deposit at the outset of this tenancy, and that the move-in and move-out inspections had not been formally completed for this tenancy.

Both the Landlord and the Tenant agree in their verbal testimony that the tenancy ended on October 2, 2019, and that the forwarding address for this tenancy had been provided to the Landlord, via text message on October 21, 2019. The Landlord confirmed receiving the text message with the Tenants forwarding address on October 21, 2019.

The Landlord testified they were still holding the security deposit for this tenancy and that as of the date of this hearing they were in the process of filing a claim against the deposit but that no hearing had been scheduled.

### Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I accept the agreed upon verbal testimony of the Landlord and Tenant, and I find that this tenancy ended on October 2, 2019, the date the parties agreed the Tenant had moved out of the rental unit.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

#### **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.

I also accept the agreed upon verbal testimony of both the Landlord and the Tenant, that the Landlord was in receipt of the Tenant's forwarding address for this tenancy, on October 21, 2019.

Accordingly, I find that the Landlord had until November 5, 2019, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit. The Landlord, in this case, did neither.

As a result, the Tenant was with in their rights to apply for the return of their security deposit as of November 6, 2019. However, in this case, the Tenant applied on October 25, 2019.

I acknowledge that the Tenant's premature application had not been discussed during these proceedings. However, upon subsequent review of the documentary evidence following these proceedings, the tenant's early application was noted by this Arbitrator. Consequently, I find that the Tenant prematurely submitted their application for these proceedings and did not wait the required 15 days before making their application. Therefore, I must dismiss the Tenant's application with leave to reapply.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution with leave to reapply; and note that this does not extend any applicable time limits under the legislation for either party.

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: March 10, 2020

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Residential Tenancy Branch