



# 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 pursuant to the Tenant's Application for Dispute Resolution, made on October 23, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Tenant attended the hearing and as accompanied by A.T., a witness. The Landlord attended the hearing on her own behalf. All in attendance provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail on October 24, 2019. The Landlord acknowledged receipt.

The Landlord testified the Tenant was served with a documentary evidence package by registered mail on January 22, 2020. The Tenant denied receipt. However, in light of my findings below, it has not been necessary to consider the Landlord's documentary evidence.

The parties were in attendance and were prepared to proceed. The parties were given an 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

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant confirmed the tenancy began on December 1, 2018 and ended on or about October 1, 2019. During the tenancy, rent was due in the amount of \$1,200.00 per month. The Tenant paid a security deposit of \$600.00 and a pet damage deposit of \$600.00, which the Landlord holds.

The parties agreed that the Tenant's forwarding address in writing was provided to the Landlord with the Notice of Dispute Resolution Hearing package. As noted above, the Landlord acknowledged receipt of these documents during the hearing.

### Analysis

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

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the Tenant's forwarding address in writing was provided to the Landlord with the Notice of Dispute Resolution Hearing package. However, a forwarding address provided in this manner does not meet the requirement of a separate written notice. This is because a landlord who receive the forwarding address with a Notice of Dispute Resolution Hearing package may believe that because the matter is already scheduled for a hearing, it may be too late to file a claim against the deposits.

During the hearing, the Tenant confirmed that the residential address provided on the Application is her forwarding address. Accordingly, I order that the Tenant's forwarding address is deemed to be received by the Landlord on March 17, 2020. Therefore, in accordance with section 38(1) of the *Act*, I find the Landlord has until April 1, 2020 to deal with the deposits in accordance with section 38 of the *Act*. That is, unless the parties reach an agreement with respect to the deposits (which should be reduced to writing for the benefit of both parties), the Landlord must either return the deposits to the Tenant or make a claim against them by filing an application for dispute resolution with the Residential Tenancy Branch. If the Landlord fails to deal with the deposits as described, the Tenant remains at leave to reapply for the return of double the amount of the deposits held in accordance with section 38(6) of the *Act*.

### Conclusion

The Application is dismissed with leave to reapply as described above.

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 17, 2020

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Residential Tenancy Branch