



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MISSION GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, MNSDS-DR

### Introduction

This hearing dealt with the tenant's first application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$500.00 for compensation for a reservation fee under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67.

This hearing also dealt with the tenant's second application pursuant to the *Act* for:

- authorization to obtain a return of the tenant's security deposit, pursuant to section 38.

The landlord's two agents, landlord HW ("landlord") and "landlord JM," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 38 minutes.

The landlord confirmed that she was the director of property management and landlord JM confirmed that she was the property management coordinator. Both landlord agents confirmed that they had permission to speak on behalf of the landlord company named in this application.

The landlord confirmed receipt of the tenant's two applications for dispute resolution hearing packages and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's two applications and the tenant was duly served with the landlord's evidence.

The tenant's security deposit application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant's paper application only, not any submissions from the landlord. An "interim decision," dated July 3, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenants were required to serve the landlords with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The landlord confirmed receipt of the above documents.

Both parties confirmed that they had no objections and they were ready to proceed with this hearing.

During the hearing, the tenant confirmed that he did not want a return of his \$500.00 reservation fee from the landlord. He stated that he was allowing the landlord to use this \$500.00 towards the remainder of his April 2020 rent, for which he had already paid \$650.00 towards the total rent of \$1,150.00. Accordingly, the tenant's application of \$500.00 for the reservation fee is dismissed without leave to reapply.

#### Issue to be Decided

Is the tenant entitled to recover his security deposit from the landlord?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2019. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Monthly rent of \$1,150.00 was payable on the first day of each month. A security deposit of \$575.00 and a pet damage deposit of \$575.00 were paid by the tenant. The landlord returned the full pet damage deposit of \$575.00 to the tenant but retained the entire security deposit of \$575.00. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address, which was received by the landlord and noted on the move-out condition inspection report on May 6, 2020. Both reports were provided for this hearing. The landlord did

not have written permission to keep any part of the tenant's security deposit. The landlord did not file an application to retain any amount from the tenant's security deposit.

The tenant claimed that his tenancy ended on April 30, 2020, the date that the landlord told him it ended. The landlord stated that the tenancy ended on May 14, 2020, after the tenant's subletter did not sign a written tenancy agreement.

The tenant seeks a return of his security deposit of \$575.00 from the landlord. The landlord disputes this application, claiming that the tenant owes money for rent and other damages.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities based on the testimony and evidence of both parties. The tenant provided his written forwarding address, which was received by the landlord on May 6, 2020. This tenancy ended by May 14, 2020. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the security deposit to the tenant or file an application to retain it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to double the value of his security deposit of \$575.00, totaling \$1,150.00.

Although the tenant did not apply for double the value of his security deposit, I am required to consider it as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17. I informed the landlord of this fact during the hearing.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,150.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application of \$500.00 for the reservation fee is dismissed without leave to reapply.

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: October 05, 2020

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Residential Tenancy Branch