



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRANDIZ HOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD RPP

### Introduction

The tenant applied for the return of his security deposit and for the return of his personal belongings, pursuant to sections 38 and 62 of the *Residential Tenancy Act* ("Act").

Only the tenant attended the hearing on October 29, 2021. The tenant testified that he served a copy of the Notice of Dispute Resolution Proceeding on the landlord, in person, shortly after May 12, 2021.

### Issue

1. Is the tenant entitled to an order for the return of the security deposit?
2. Is the tenant entitled to an order for the return of his personal property?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below. No documentary evidence was submitted in respect of this application.

The tenant gave evidence that he was locked out of the rental unit (he could not recall the unit number) on or about January 31, 2021. That is when the tenancy ended. The tenant had paid to the landlord a security deposit in the amount of \$325.00. The landlord has to date not returned that deposit. The tenant testified that he did not provide the landlord with his forwarding address after being locked out as he was homeless.

The tenant also gave evidence that as a result of being locked out, he was unable to return to the rental unit and retrieve his personal property. The landlord has apparently not returned the property to the tenant.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Claim for Security Deposit**

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

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.

In this dispute, the undisputed oral evidence of the tenant is that the landlord has not repaid the security deposit. He is not aware of any application by the landlord made against him. As such, it is my finding that the landlord must pay to the tenant an amount of \$325.00. A monetary order for this amount is issued to the tenant. The tenant must serve a copy of the monetary order on the landlord.

In this case, as the tenant did not provide his forwarding address to the landlord, however, I am unable to consider a claim for double the security deposit, pursuant to section 38(6) of the Act.

### **Claim for Order for Return of Personal Property**

Section 65(1)(e) of the Act states that an arbitrator may make an order that “personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned” to the tenant.

In this matter, it is the tenant’s undisputed oral evidence that the landlord has, by virtue of locking him out of the property, unlawfully retained the tenant’s personal property. As such, it is my finding that that tenant is entitled to an order requiring the return of his personal property by the landlord. The landlord is therefore ordered, pursuant to section 65(1)(e) of the Act, to return to the tenant his personal property that was in the rental unit at the time the tenancy ended.

The tenant, or an agent for the tenant, must attend to the residential property with a copy of this decision to arrange for the retrieval of his personal property. Should the landlord fail to comply with this order then the tenant is at liberty to make an application for dispute resolution seeking compensation for the value of the personal property if it is not returned.

### **Conclusion**

**The tenant’s application is granted.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 29, 2021

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Residential Tenancy Branch