



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD FFT

### **Introduction**

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

MT, the applicant, identified themselves as the Administrator of the Estate for the deceased tenant DT. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the applicant and I were the only ones who had called into this teleconference call.

The applicant was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits them from recording the dispute resolution hearing. The applicant confirmed that they understood.

The applicant provided sworn, undisputed testimony that they had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of registered mail on February 15, 2022. The applicant provided the tracking number in the hearing. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the Application and evidence on February 20, 2022. five days after mailing.

### **Preliminary Issue-Applicant's Forwarding Address**

The applicant testified that they had formally provided with their forwarding address on February 16, 2022 by way of registered mail. Although the applicant provided the tracking number for the mailing of this package, they did not provide a copy of the written request that was sent to the landlord.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

The applicant had applied for the return of the security deposit, but did not provide sufficient evidence to support that the landlord was provided with their forwarding address in writing, as required by section 38 of the *Act*. The landlord did not attend the hearing, and the applicant did not provide any witness testimony or any kind of confirmation that the landlord had received the forwarding address from the applicant. Accordingly, I dismiss this application with leave to reapply. The applicant must provide their forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the security deposit in full, or file an application for dispute resolution. If the landlord fails to comply with section 38 of the *Act*, the applicant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the applicant was unsuccessful with their application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application.

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: May 02, 2022

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Residential Tenancy Branch