



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSD**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order for the return of the security deposit pursuant to Section 38 of Act.

The hearing was conducted via teleconference. The Tenant and her Witness attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on February 27, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on March 4, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issue to be Decided

Is the Tenant entitled to an Order for the return of the security deposit?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant testified that this tenancy began as a fixed term tenancy on September 1, 2020. The fixed term ended on August 31, 2021, then the tenancy continued on a month-to-month basis. Monthly rent was \$800.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy. The tenancy ended on January 30, 2022. The Landlord returned \$300.00 of the security deposit at the end of the tenancy; \$100.00 is still held by the Landlord.

The Tenant stated that a move-in and move-out condition inspection were never organized and completed with the Landlord. The Tenant provided an email address on January 30, 2022 as her forwarding address.

The Tenant's Witness confirmed that on the Tenant's move out day, she observed the Tenant write the Landlord an email containing her forwarding email address. The Witness stated she remembered the Landlord said he will hold \$100.00.

The Tenant's Witness testified that she knew the Landlord paid the Tenant some of her security deposit by e-transfer, but not all of it. The Tenant did not agree that the Landlord could keep any of her security deposit.

The Tenant testified that she had problems with her previous roommate, and she was scared that the Landlord would pass on her forwarding address to that previous roommate. She was worried about being harassed by that previous roommate.

The Tenant is seeking the last \$100.00 of her security deposit back from the Landlord.

## 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.

Section 38 of the Act deals with the return of a Tenant's security deposit. It states:

### ***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.*

...

RTB Policy Guideline #17-Security Deposit and Set off provides a statement of the policy intent of the legislation regarding security deposits. Policy Guideline #17 states:

...

### ***B. SECURITY DEPOSIT***

...

10. *The landlord has 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 return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*

**C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

1. *The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- *a landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.*

The Tenant must provide a physical address as her forwarding address, whether that is a PO Box, a family member's home address or a friend's home address, to the Landlord. Form #RTB-47 provides all the information needed for this notification. I find as the Tenant has not done this step yet, Section 38(1) has not begun to count the 15 days for the return of the balance of the security deposit. I dismiss the Tenant's dispute resolution application with leave to re-apply for the return of the balance of her security deposit.

For the benefit of the Tenant, she may wish to discuss with an Information Officer at the RTB the options available to her to properly provide and serve her forwarding address to the Landlord. An Information Officer can be reached at:

5021 Kingsway

Burnaby, BC

Phone: 250-387-1602 / 1-800-665-8779

Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenant's application is dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 27, 2022

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Residential Tenancy Branch