



**Dispute Resolution Services**  
Residential Tenancy Branch  
Ministry of Housing and Social Development

**Decision**

**Dispute Codes:**

CNC

**Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated March 4, 2009, purporting to be effective May 1, 2009. Both Parties appeared and gave testimony

**Preliminary Matters**

Manufactured Home Park Tenancy Act

The tenant made application under the Manufactured Home Park Tenancy Act. However, section 4 of the Act states:

*“This Act does not apply with respect to any of the following:  
(a) a tenancy agreement under which a manufactured home site and a  
manufactured home are both rented to the same tenant”*

Given the above, I find that this matter is not under the jurisdiction of the Manufactured Home Park Tenancy Act and will therefore proceed under the Residential Tenancy Act

Matter No Longer Under Dispute

At the outset of the hearing the tenant advised that the tenant had already vacated the unit. Therefore I find that as the tenancy has come to an end, the tenant’s application to cancel the One-Month Notice to End Tenancy must be dismissed.

### Other Matters

The landlord had submitted evidence and testimony regarding damages and losses being claimed by the landlord against the tenant. In regards to the landlord's own claim of damages or loss of rent, I am not able to hear, nor consider, any claims by the landlord during these proceedings as the matter before me was convened to deal with the *tenant's* application to cancel the One-Month Notice and no application or cross application was ever filed by the landlord. That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a formal claim for compensation for damages and loss against the tenant, pursuant to section 67 of the Residential Tenancy Act.

The tenant gave additional testimony stating that the landlord had retained the tenant's security deposit of \$290.00, plus interest, and requested that this deposit be returned now that the tenant had vacated the unit pursuant to the notice.

However, as mentioned earlier in this decision, the tenant's application before me was to cancel the Notice to End Tenancy, and did not relate to the issue of the security deposit. I find that the application cannot be amended at this point as it would prejudice the respondent who had no notice of such a claim. In any case, this claim would be premature even if the tenant *had* included it in his application, as the tenant had not yet vacated at the time of the application and the tenant has acknowledged that the landlord was never provided with the tenant's forwarding address in writing.

Under the Act, a landlord may retain the deposit to satisfy a liability or claim for damages and loss caused by the tenant only if the landlord has made an application for dispute resolution and successfully obtained a monetary order and an order to keep the deposit. However, under section 38, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later,

failing which the *tenant* can make an application for the return of double the security deposit under section 38 of the Act

The parties were encouraged to seek advice from the Residential Tenancy Branch on the above two matters, which are not before me and cannot be determined during these proceedings.

That being said, during the hearing, the tenant agreed to provide the landlord with the current forwarding address of the tenant for service with the expectation that the deposit be refunded. The landlord accepted and recorded the service address provided by the tenant. Accordingly I find that, as of this date, May 14, 2009, the tenant has furnished the forwarding address to the landlord in accordance with the Act and the landlord therefore has 15 days, pursuant to section 38 of the Act to either return the security deposit or make an application and claim to keep the deposit.

### **Conclusion**

I hereby dismiss the tenant's application in its entirety without leave to reapply based on the fact that the tenancy has already ended. The parties are at liberty to make future applications for dispute resolution regarding the other matters relating to this tenancy.

May, 2009

Date of Decision

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Dispute Resolution Officer