



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Introduction**

This hearing was in response to an Application for Dispute Resolution, in which the Tenants applied for the return of double their security deposit, for compensation for a portion of a utility bill, and to recover the filing fee from the Landlord for the cost of filing this application.

The Respondent appeared at the hearing but the Applicants did not appear at the hearing. The Agent for the Landlord stated that he is not the Landlord and he requested that his name be removed from the Application for Dispute Resolution. In the absence of evidence that establishes that the Agent for the Landlord is the Landlord, I grant the Agent for the Landlord's request and the Application for Dispute Resolution has been amended accordingly.

I find that the Tenants failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss their claim for compensation for the cost of utilities and for compensation for filing this Application for Dispute Resolution without leave to reapply on those specific issues.

### **Background and Evidence**

The Agent for the Landlord stated that he received a security deposit in relation to this tenancy, in the amount of \$375.00, on September 26, 2009. He stated that he does not know precisely when the Tenants vacated the rental unit, although he believes it was sometime near the end of May. He stated that he never received a forwarding address for the Tenants until he was served with the Notice of Hearing and Dispute Resolution Package in relation to this dispute resolution proceeding. He stated that he has no record of the Tenant verbally providing him with a forwarding address.

The Landlord submitted a copy of a tenancy agreement that names the Landlord and both Tenants, although it is only signed by the male Tenant. The Landlord also submitted an addendum to the tenancy agreement, which appears to be signed by the male Tenant, in which the Tenant authorizes the Landlord to retain the security deposit if there is unpaid rent or damages at the end of the tenancy.

The Agent for the Landlord stated that the Tenant's security deposit was retained at the end of the tenancy because the Tenants still owed rent and utilities, and because there was minor damage to the rental unit. He stated that he did not file an Application for

Dispute Resolution claiming against the security deposit because the addendum authorized him to retain the deposit

## Conclusion

On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants did not provide the Landlord with a forwarding address in writing at the end of this tenancy. The Landlord denies being verbally advised of the Tenant's forwarding address and subsequently recording it.

There is a general legal principle that the places the burden of proving a fact on the person who is claiming that fact, not on the person who is denying it. In these circumstances, the burden of proving that the Landlord recorded the Tenant's forwarding address, after being verbally provided with it, rests with the Tenants and I find that the Tenants have submitted insufficient evidence to establish that this occurred. On this basis, I find that the Landlord did not receive a forwarding address for the Tenants, in writing, until the Landlord was served notice of this dispute resolution proceeding.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. As I have found that the Landlord did not receive a forwarding address in writing prior to the commencement of this dispute resolution proceeding, I find that the Tenants' Application for Dispute Resolution has been premature, and I dismiss the Tenants' Application for Dispute Resolution.

For the purposes of section 38(1) of the *Act*, I find that the Landlord has been served with a forwarding address for the Tenants on November 05, 2009. I make this finding pursuant to section 62 of the *Act*. As I have found that the Landlord has now received the Tenant's forwarding address in writing, I hereby Order the Landlord to comply with section 38(1) of the *Act* prior to November 16, 2009.

For the benefit of both parties, section 38(1) of the *Act* reads:

**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,

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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.

Section 20(e) of the *Act* prohibits Landlords from including a term in a tenancy agreement that automatically authorizes the Landlord to keep all or part of the security deposit. The addendum that the male Tenant signed prior to the beginning of this tenancy, in which he authorized the Landlord to retain his security deposit if there is unpaid rent or damages at the end of the tenancy, does not comply with the *Act* and is therefore, of no force and effect. Both parties are hereby advised that this addendum does not constitute written authorization for the Landlord to retain the security deposit.

The Tenants retain the right to file another Application for Dispute Resolution claiming for the return of their security deposit if the Landlord fails to comply with section 38(1) of the *Act*.

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: November 05, 2009.

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Dispute Resolution Officer