



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MNSD

### **Introduction**

The tenants seek recovery of their security deposit. Both parties appeared at the hearing of this matter and gave evidence under oath.

### **Issues(s) to be Decided**

Are the tenants entitled to the orders sought?

### **Background and Evidence**

The tenants gave evidence that they provided the landlord with their forwarding address in writing on March 31, 2010, the day they vacated the rental unit. The tenants testified that they did not keep a copy of the letter they wrote to the landlord enclosing their new address and were therefore unable to tender it in evidence.

The landlord says he did not receive a letter from the tenants enclosing their forwarding address. The landlord testified that the first time he received the tenants' address was when he received the tenants' Application for Dispute Resolution which shows an address for the tenants.

### **Analysis**

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either

return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenant of the forwarding address. I find that the tenants have failed in their burden of proving that they provided their forwarding address to the landlord in a letter which also requests the return of their security deposit. Even though the landlord has now received an address for the tenants as set out in their Application for Dispute Resolution seeking the return of double the deposit, I do not find that this is the form of notice contemplated by the Act in that it would be sufficient to put the landlord on notice to return the deposit as set out in Section 38(1).

### **Conclusion**

The tenant's application for recovery of the deposit is premature as they have not proven that they provided the landlord with their forwarding address prior to the service of the Application for Dispute Resolution and it is therefore dismissed. However, as the landlord has now received the tenants' forward address, that being \*\*\*, I direct that the landlord to comply with the Act, that is the landlord now has 15 days commencing the day after August 26, 2010 to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

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