



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNSD, MNDC, and OLC

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for the return of their security deposit; a monetary Order for money owed or compensation for damage or loss; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or tenancy agreement.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct name of the Landlord.

### Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the return of their security deposit; to compensation for being served with a Notice to End Tenancy; and whether there is a need for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

### Background and Evidence

The Landlord and the Tenants agree that this tenancy began in November of 2009; that the Tenants paid a security deposit of \$675.00; that the Tenants vacated the rental unit in June of 2010; that the Tenants did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant with the initials "A.M." stated that he personally served the Witness for the Landlord with a letter, although he is unable to recall the exact date in June that he served this document. The Tenant stated that this letter provided the Landlord with a forwarding address for the Tenants. The Tenant with the initials "M.M." stated that he

observed the other Tenant personally serve the Witness for the Landlord with this letter, although he is also unable to recall the exact date in June that it was served.

The Witness for the Landlord, who is the Landlord's wife, indicated that she was not served with a letter containing a forwarding address for the Tenants. The Landlord indicated that he did not receive a forwarding address for the Tenants until he received the Tenant's Application for Dispute Resolution.

The Landlord and the Tenants agree that the Landlord has not served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*. The Landlord and the Tenant agree that the Landlord has served the Tenants with a One Month Notice to End Tenancy for Landlord's Cause, pursuant to section 47 of the *Act*, and that the reason for ending the tenancy on the Notice was that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord. The Tenants are seeking compensation for being served with the One Month Notice to End Tenancy. The Tenants did not submit a copy of the Notice to End Tenancy that was served.

### Analysis

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation, not on the respondent. In these circumstances, the burden of proof rests with the Tenants.

I find that the Tenants submitted insufficient evidence to show that they provided the Landlord with a forwarding address prior to serving them with a copy of the Application for Dispute Resolution. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the testimony of the two Tenants, who declared that a letter containing the forwarding address was personally served to the Landlord's wife; by the fact that neither Tenant could recall the time or date of service of this document; by the absence of evidence that refutes the evidence of the Landlord's wife, who denies receiving the letter; and by the absence of evidence that refutes the Landlord's evidence who declared that he did not receive a forwarding address for the Tenants until he was served with the Application for Dispute Resolution package.

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 the Tenants failed to establish that they provided the Landlord with their forwarding address prior to filing this Application for Dispute Resolution, I find that the Tenants filed the Application for Dispute Resolution prematurely.

As the Tenants filed the application to recover the security deposit prematurely, I dismiss their application to recover the security deposit with leave to reapply.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenants did not receive notice to end a tenancy under section 49 of the *Act*, I find that they are not entitled to compensation that is the equivalent of one month's rent, pursuant to section 51 of the *Act*.

There is nothing in the *Act* that that a tenant who receives a notice to end a tenancy under section 47 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As the Tenants have not established that they are entitled to compensation in the equivalent of one month's rent, I dismiss their claim for compensation for one month's rent.

### Conclusion

Both parties were clearly advised at the hearing that the Landlord is deemed to be in receipt of the forwarding address on the date of this hearing, which is November 22, 2010, on the basis of the Application for Dispute Resolution. The Landlord was advised that he has fifteen days from this date to comply with section 38 of the *Act*. The Tenants were advised that they have the right to file another Application for Dispute Resolution if the Landlord fails to comply with section 38 within fifteen days.

As the Tenants have failed to establish that the Landlord has not complied with the *Act*, I dismiss the Tenants' application for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

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 23, 2010.

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Dispute Resolution Officer