



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the tenant for the return of double his security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to the landlords address by registered mail on October 07, 2010. The female landlord confirmed receipt of this.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to the return of double his security deposit?

### Background and Evidence

Both parties agree that this tenancy started on June 29, 2010 and ended on July 29, 2010. No written tenancy agreement was in place and this was a month to month tenancy. The tenant paid a monthly rent of \$1,500.00 which was due on the first of the month. The tenant paid a security deposit of \$800.00 on June 01, 2010.

The tenant states the landlord has withheld his security deposit. The tenant states the rental unit was left clean at the end of the tenancy and there were no damages. The tenant states they only stayed in the rental unit for one month as the landlord had not completed the renovation work and the tenants did not want to live in the house in this condition.

The tenant and landlord agree that no move in condition inspection took place at the start of the tenancy.

The tenant testifies that he sent the landlord his forwarding address in writing by registered mail on August 16, 2010. The Canada post tracking information shows that this letter was signed for by a person with the same or similar name on August 19, 2010. The tenant has not provided a copy of this letter in his evidence for this hearing or in the landlord's hearing documents. During the hearing the tenant states that the address on his application is his current address.

The landlord disputes that he received the tenants forwarding address on August 19, 2010. He states he has no record of what was in the letter sent on that day and has no record of who signed for it. The landlord states that as the tenant has not provided a copy of this in his evidence that there is no record of what was contained in this registered mail.

Both parties gave verbal testimony that was not pertinent to my decision. I considered the evidence that was pertinent and based my decision on this.

### Analysis

Section 38(1) of the *Act* says that a landlord (or the person acting as his agent) has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

The tenant argues that he did send the landlord his forwarding address in writing on August 16, 2010 and he did provide a copy of this with his application to the Residential Tenancy Branch. However, there is no record of this letter being received at the branch and no copy was sent by the tenant in the landlords hearing documents. It is the applicants' responsibility to ensure they provide sufficient evidence to support any application made and any evidence provided for the hearing must also be sent to the respondent.

When a landlord contradicts the tenants' testimony the burden of proof falls to the tenant to provide additional corroborating evidence to satisfy the burden of proof. The tenant has provided Canada Post tracking information which shows a registered letter was sent to the landlord on August 16, 2010. This information details that this letter was signed for by either the landlords or their representative. However, as the tenant has not provided sufficient evidence to show that he sent the landlord his forwarding address in this registered mail and there is no evidence to show he provided a copy of the letter prior to this hearing; I cannot uphold his application for the return of double his security deposit. The letters sent in by the tenant after the hearing concluded are inadmissible as the tenant did not provide these to the landlord in his hearing documents before the hearing started.

However, the tenant has declared during the hearing that the address on his application is his current address and therefore it is my decision that the landlord has received the tenants forwarding address in writing as from today's date **February 04, 2011**.

Consequently, the landlord has until **February 19, 2011** to either return the tenants' security deposit or make a claim to keep it pursuant to section 38(1) of the Act.

Therefore, the tenant is not entitled, at this time, to the return of his security deposit.

### Conclusion

The tenants' application is dismissed with leave to reapply.

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: February 04, 2011.

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Residential Tenancy Branch