



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on October 7, 2010. Mail receipt numbers were provided in the Tenant's evidence. The landlord confirmed receipt of the hearing documents.

The Landlord and Tenant appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to establish a monetary claim as a result of that breach?

### Background and Evidence

The fixed term tenancy agreement was effective May 1, 2008 and switched to a month to month tenancy after April 30, 2009. Rent was initially payable on the first of each

month in the amount of \$800.00. The Tenant paid a \$400.00 security deposit on May 1, 2008.

The Tenant testified she is seeking the return of her security deposit and that she did not realized until after she moved that she was required to provide her notice to end the tenancy earlier and in writing. She told the Landlord during a telephone conversation on August 2<sup>nd</sup> or 3<sup>rd</sup>, 2010, that she would be vacating the unit and was out by August 26, 2010. She did not provide the Landlord with her forwarding address until she wrote it on her application for dispute resolution.

The Landlord stated that she had nothing further now that the Tenant has confirmed she did not provide her with proper written notice to end the tenancy. She confirmed she has not returned the security deposit; she does not have the Tenant's written permission to keep the security deposit; she does not have an Order authorizing her to retain the deposit; and she has not made an application for dispute resolution to keep the security deposit.

### Analysis

The Tenant has applied for the return of the security deposit; however the Tenant has not met the burden of proving that she gave the landlord(s) a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Therefore in the absence of any proof that a forwarding address in writing was given to the Landlord prior to this application, it is my finding that, at the time that the Tenant

applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. That being said, I find the Landlord has now been provided the Tenant's forwarding address effective today's date of February 8, 2011.

I therefore dismiss this claim with leave to re-apply.

Conclusion

I HEREBY DISMISS the Tenant's application, 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 08, 2011.

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Residential Tenancy Branch