



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, MND, MNDC, FF

### Introduction

This hearing was convened in response to applications filed by both the tenants and the landlords. The tenants' application seeks:

1. Return of the security deposit; and
2. Recovery of the filing fee paid for this application.

The landlords' application filed seeks:

1. A monetary Order for compensation for damage;
2. A monetary Order for compensation for loss; and
3. Recovery of the filing fee paid for this application.

Both parties appeared at this matter and gave evidence under oath.

### Issue(s) to be Decided

Is either party entitled to the Orders sought?

### Background and Evidence

The tenant testified that she paid a security deposit of \$750.00 on September 15, 2009. The tenant testified that this tenancy ended on August 31, 2010 and that she provided her forwarding address to the landlord immediately after vacating the premises but, to date, the security deposit has not been returned.

The landlords say that they never received the tenants' forwarding address.

The tenants testified that they did provide their forwarding address to the landlord 4 to 5 days after vacating the premises. Further, that they also mailed their forwarding address to the landlord by priority post. The tenants testified that they do have copies

of the letters they left with and mailed to the landlord in which they provided their forwarding address and asked for the return of their security deposit as well as proof that it was delivered Canada Post however no one told them they had to supply these items in evidence so they did not do so.

With respect to the landlords' claim the landlord testified that the tenants left the rental unit in a mess. The landlords claim \$2,450.00. In support of his claim the landlord supplied a letter from the tenants who moved in after these tenants vacated. The letter is dated September 1, 2010 and it advises the landlord that the carpet had a foul odour and remained filthy even after steam cleaning, that the oven burners were not working properly, that a bedroom window was broken and that the front and backyards were left in a "big mess" with garbage and the yard required landscaping.

### **Analysis**

With respect to the tenants' claims 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. The landlord says he did not receive the forwarding address. The tenants say they have copies of the letters they sent and proof that the letters were delivered however they did not submit that to the Dispute Resolution Officer to be considered. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here and I therefore find that the tenants have failed to prove that they provided their forwarding address in writing to the landlord and the landlord therefore was under no obligation to return the deposit. I therefore dismiss the tenants' claim for double the deposit.

With respect to the landlords' claim, likewise as the landlord has brought this claim the landlords bear the burden of proving it. I find that the landlord has supplied insufficient

evidence to prove that the tenants left the rental unit in a mess or that they caused the damage the landlords now claims.

Now that the landlord does have the tenants' forwarding address as set out on their Application for Dispute Resolution and the landlords' claim for damages has been dismissed, I direct that the landlords return the actual deposit itself in the sum of \$750.00 forthwith (no interest has accrued)

As neither party has been fully successful in their claim I therefore dismiss both applications for recovery of the filing fee.

### **Conclusion**

The tenants are provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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*.