



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD MNR MNDC FF

### Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the onset of the hearing, the Landlord confirmed she wished to amend their application to request money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent.

The Landlord had indicated these requests in the notes written in the details of the dispute; therefore the Tenant was made aware of the Landlord's request in the initial application and would not be prejudiced by the Landlord's request to amend the application.

Based on the aforementioned I approve the Landlord's request to amend the application to include the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for the landlord's use of property and to obtain an Order of Possession.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 10, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing documents.

The parties 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 Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective December 1, 2007 which was set to switch to a month to month tenancy agreement after November 30, 2008. Rent was payable on the first of each month in the amount of \$900.00 and on November 23, 2007 the Tenants paid the Landlord \$450.00 as the security deposit. The Tenants vacated the property as of March 31, 2008.

The Landlord filed their application for dispute resolution on December 08, 2010. The Landlord testified they did not know the Tenants' forwarding address until they received an e-mail from the Tenant on December 8, 2010.

The Tenant testified and confirmed she provided her forwarding address to the Landlord in an e-mail on December 8, 2010. She stated that she provided the previous resident manager with their forwarding address when they moved out of the unit back in March 2008; however she does not have any proof of this.

The Landlord argued that the Tenants skipped out of the tenancy as noted on their documents. If the Tenants skipped they would not have provided their forwarding address.

Analysis

I have carefully considered the testimony and evidence before me which consisted of, among other things, a copy of the tenancy agreement and a copy of the Landlord's security deposit refund form.

Section 60 of the Act provides the latest time an application for dispute resolution can be made is as follows:

**60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

The evidence supports this tenancy ended March 31, 2008 and the Landlord filed their application December 08, 2010. Based on the aforementioned I find the Landlord has failed to make their application within the required time frames as set forth under Section 60 of the Act. Therefore I dismiss the Landlord's application, without leave to reapply.

In the presence of undisputed testimony I find the Landlord received the Tenants' forwarding address on December 8, 2010. Section 39 of the Act provides that despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, (a) the landlord may keep the security deposit or the pet damage deposit, or both, and (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished. Therefore the Landlord is entitled to retain the security deposit.

### Conclusion

I HEREBY DISMISS the Landlord's application, without 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: March 17, 2011.

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Residential Tenancy Branch