



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on March 2, 2011 for a 1 year fixed term tenancy beginning on May 1, 2011 with a monthly rent of \$1,800.00 due on the 1<sup>st</sup> of each month with a security deposit of \$900.00 paid. The parties agreed the tenancy ended on April 30, 2012.

The tenant testified that she provided the landlord with her forwarding address by email on or before April 30, 2012. The tenant did not provide any documentary evidence to support this testimony.

The landlords testified that although they had corresponded with the tenant by phone and text messaging they had never received the tenant's forwarding address until they received the tenant's Application for Dispute Resolution. The male landlord testified they received the tenant's Application on June 20, 2012.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In the case of verbal testimony, I find that where both the landlord and tenant agree on an occurrence, there is no reason why such the occurrence can be considered fact. However when the parties disagree with what occurred , the testimony, by its nature, is virtually impossible for a third party to determine what actually occurred and the burden is on the party making the claim to provide additional evidence to support their claim.

As the tenant has provided no evidence that she provided her forwarding address prior to filing her Application for Dispute Resolution, I accept the landlord's testimony that he received the tenant's forwarding address on June 20, 2012. As such, I find the tenant failed to provide the landlord with sufficient time to fulfill his obligations under Section 38 to either return the deposit or file an Application to claim against it, prior to filing her Application.

### Conclusion

For the reasons noted above, I find the tenant's Application for Dispute Resolution is premature and I dismiss it 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: August 27, 2012.

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Residential Tenancy Branch