



# 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 an Application for Dispute Resolution filed on July 25, 2013, by the Tenants to obtain a Monetary Order for the return of double their security and pet deposits and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Landlord confirmed receipt of evidence from the Tenants. No evidence had been received at the *Residential Tenancy Branch* from the Tenants by the time of this proceeding.

The Tenant affirmed that they had not received evidence from the Landlord. The Landlord provided the tracking information of the registered mail package sent to the Tenants on October 18, 2013. He checked the Canada Post tracking website during this proceeding which indicated the first notice card was left on October 22, 2013; as of October 28, 2013, the final notice card was left. He confirmed the package was sent to the address provided in on the Tenants' application for dispute resolution. Based on the submissions of the Landlord I find that the Tenants are deemed served the evidence as of October 23, 2013, five days after it was mailed, pursuant to section 90 of the Act. I make this finding in part because case law provides that refusal to pick up registered mail does not avert or avoid service.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the

testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven they provided the Landlord with their forwarding address prior to making their application for dispute resolution?

Background and Evidence

The parties confirmed they entered into a fixed term tenancy agreement that began on December 1, 2012, and switched to a month to month tenancy after January 1, 2013. Rent was payable on the first of each month in the amount of \$975.00 and on November 4, 2012, the tenants paid \$487.50 as the security deposit plus \$200.00 as the pet deposit. The tenancy ended as of June 28, 2013, after the parties mutually agreed to end the tenancy.

The Landlord testified that a move in inspection was conducted on November 6, 2012 and the move out inspection was conducted on June 28<sup>th</sup> and June 29, 2013, in the presence of the female Tenant and her friend. The Landlord stated that by the time they did the inspection on June 28<sup>th</sup> it was too dark to complete so they made arrangements to return the next day and complete the condition inspection form. He gave the Tenant a copy to sign but she refused saying she needed to have her boyfriend check it over. He said she could take her copy and review it and send him a signed copy. At no time did the Tenants provide him with a forwarding address so he was not able to process the deposits.

The Tenant testified that she provided her forwarding address during the June 28<sup>th</sup> inspection when she wrote it on a piece a paper. She later stated that it was the Landlord's brother-in-law wrote the address down on a piece a paper that was left in the unit because her hand writing was not that good. The Tenant read her witness statement into evidence which was from her friend who said that he was present during the June 28, 2013, inspection and he witnessed the female Tenant write her address on a piece of paper and hand it to the Landlord.

The Tenant disputed that a move in condition was ever conducted and argued that she never took a copy of the move out inspection. She confirmed that she refused to sing the move out inspection but stated that the Landlord did not want her to take a copy for

fear that her boyfriend would alter it. She stated that they had agreed that the Landlord would scan a copy of the move out form and e-mail her a copy but he never did that.

In closing, the Landlord argued that he had never received a forwarding address from the Tenants; his brother-in-law never wrote down anything; he never agreed to scan a copy of the move out form and in fact he made sure to give her a copy; and there was no piece of paper just lying in the unit.

### Analysis

After careful consideration of the foregoing and on a balance of probabilities I find as follows:

The Tenant contradicted her own testimony, first by saying she wrote down her address and handed it to the Landlord and then she stated that the Landlord's brother-in-law wrote it down on a piece of paper that was left in the unit because her writing was not that legible. The Tenant contradicted herself again when she read her friend's witness statement which indicated he saw her write it down and hand it to the Landlord. The Landlord disputed ever receiving a forwarding address and argued that his brother-in-law did not write anything down.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Based on the above, I find the Tenant's explanation that she provided her forwarding address on a scrap piece of paper, from memory, to be improbable given the contradictory testimony and the circumstances presented to me during the hearing. Therefore, I find there to be insufficient evidence to prove the Tenants provided the Landlord with their forwarding address in writing, as required by the Act.

Accordingly, it is my finding that, at the time that the Tenant(s) applied for dispute resolution, the Landlord was under no obligation to return the security and pet deposit and therefore this application is premature. I therefore dismiss this claim with leave to re-apply.

The Tenants have not been successful with their application; therefore, I decline to award recovery of the filing fee.

At the hearing the Tenant stated that the address on the application for dispute resolution is their present forwarding address; therefore the Landlord is now considered to have received the forwarding address in writing as of October 30, 2013 and is now required to mail the Tenants a copy of the move in and move out condition inspection report forms.

#### Conclusion

I HEREBY DISMISS the Tenants' 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: October 30, 2013

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Residential Tenancy Branch

