



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for the return of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant DT and the landlord attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord testified that he did not receive the tenant's hearing package until February 12, 2015 and therefore only sent his evidence for the hearing on February 16, 2015. The landlord's evidence was not received by the Arbitrator prior to the hearing. The landlord was deemed to have been served the tenant's hearing package and evidence five days after it was sent on January 27, 2015 in accordance with s. 90(a) of the *Act*. Consequently, the landlord's evidence, had it been received, would have been considered late evidence in accordance with s. 3.15 of the Residential Tenancy Rules of Procedure and would not have been considered at the hearing. The landlord confirmed receipt of the tenants' evidence. All available evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

The tenants named on this application both have separate tenancy agreements. The tenants should have therefore filed separate applications to recover their security deposit and any other monetary claim against the landlord. As both claims were made on the same application I have severed the absent tenant's (BC) claim with leave to reapply.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The tenant testifies that this month to month tenancy started on July 01, 2014. The tenancy ended on July 23, 2014. The tenant rented a room in the unit for \$450.00 per month and had shared use of the rest of the unit. Rent was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$225.00 on June 28, 2014.

The tenant testifies that the landlord did receive the tenant's forwarding address in a letter sent to the landlord with the tenant's hearing package. The tenant's address was also sent by email. The tenant testified that the landlord has not returned the tenant's security deposit. The tenant seeks to recover the security deposit of \$225.00.

The tenant also seeks to recover an amount equivalent to one week's rent of \$112.50 for issues the tenants had during the tenancy and an amount equal to the security deposit in compensation because the landlord did not return the security deposit within

15 days. The tenant agreed at the hearing that the address on her application is her current forwarding address

The landlord testified that he did not receive the tenant's forwarding address in writing as the landlord has only received the first page of the tenant's letter the tenant claimed contained her forwarding address. The landlord disputed that he has received an email from the tenant containing her forwarding address. The landlord testified that the only address he has from the tenant is the address contained on her application.

### Analysis

The tenant has applied for the return of the security deposit; however, there is insufficient evidence to show that the tenant's letter provided in documentary evidence contained the tenant's forwarding address in writing as required under s. 38 of the *Act*. The landlord disputed that he received the tenant's forwarding address in this letter and the evidence presented for the hearing from the tenant in the form of this letter does not contain the second page of the letter showing that a forwarding address was provided. Furthermore, the landlord disputed that he received an email from the tenant with a forwarding address.

Therefore, It is my decision 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.

At the hearing the tenant testified that the address on the application for dispute resolution is the tenant's current forwarding address; therefore, the landlord is now considered to have received the tenant's forwarding address in writing as of today **February 17, 2015.**

The landlord therefore has 15 days to either return the tenant's security deposit or file an application to keep it. If the landlord fails to do so the tenant is entitled to file a new application to recover double the security deposit pursuant to s. 38 of the *Act*.

The tenant's application and Monetary Order Worksheet are unclear as to what, if any further monetary amounts are being claimed.

### Conclusion

The tenant's application is dismissed with leave to reapply.

The tenant not in attendance at the hearing today must file a separate application to recover her security deposit or any other monetary claims. The parties are entitled to request that the applications be joined at a hearing.

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 17, 2015

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Residential Tenancy Branch

