



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on September 19, 2014, to obtain a Monetary Order for the return of their security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the Tenants. At the beginning of the hearing the male Tenant was experiencing difficulty in hearing what was being said and without notice he left the hearing. When he did not respond to my questions the female Tenant advised that he had left to put on his hearing aids. The female Tenant said that she was sitting directly across from the male Tenant. Through translation by the female Tenant, the male Tenant confirmed that he could hear his wife speaking. As a result, the Tenants agreed that the female Tenant would submit their evidence initially, and the male Tenant would add to her submissions.

For the remainder of the hearing the evidence was submitted by the female Tenant, in consultation with the male Tenant. Upon completion the male Tenant was given the opportunity to present additional evidence that was relevant to their application; however, he only wished to speak about the size of the rental unit, which was not relevant to their application. Based on the foregoing, and for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

No one attended the teleconference hearing on behalf of the Landlords. The Tenants provided affirmed testimony that they personally served each Landlord with copies of their application for Dispute Resolution and Notice of hearing documents at the Landlord's residence on approximately September 23, 2014. Based on the submissions of the Tenants I find the Landlords were sufficiently served Notice of this proceeding and I continued in absence of the Landlords.

Issue(s) to be Decided

Have the Tenants proven entitlement to a monetary order?

Background and Evidence

The Tenant submitted that they entered into a month to month tenancy agreement that began on August 1, 2014. Rent of \$700.00 was due on or before the first of each month and on July 29, 2014 the Tenants paid \$350.00 as the security deposit.

The Tenants submitted that there were several problems with the rental unit so on August 8, 2014 they gave the Landlord their written notice to end their tenancy effective at the end of August 2014. They stated that they vacated the rental unit on August 30, 2014, and the Landlord refused to return their security deposit.

The Tenant clarified that they were only seeking the return of their security deposit as they had already vacated the property. The Tenant stated that they served the Landlords with their forwarding address in writing when they served the Landlords with their application for Dispute Resolution on September 22 or September 23, 2014. She asserted that her husband had initially tried to settle the matters with the Landlords in person and when that failed they filed their application for Dispute Resolution.

In support of their application the Tenants submitted the following two documents into evidence: (1) Their notice to end tenancy issued to the Landlords on August 8, 2014, and (2) a list of problems listing 10 items. In closing the Tenant submitted that their address has changed since they filed their application. Their new address is listed on the front page of this Decision.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlords who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenants.

Section 38(1) of the *Act* stipulates that within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 of the *Act* states that despite any other provision of this Act, if a tenant does not give a landlord their forwarding address in writing, within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

In this case the Tenants vacated the property on August 30, 2013; therefore the tenancy ended on **August 30, 2014**, pursuant to section 44(1)(d) of the *Act*. Upon review of the documentary evidence there was no forwarding address written on either the notice to end tenancy or the "List of Problems". Therefore, I conclude that at the time the Tenants' application for Dispute Resolution was filed the Landlords were under no obligation to return the security deposit, as they had not yet been served with the Tenants' forwarding address in writing. Accordingly, I conclude that this application was premature.

I therefore dismiss this application with leave to re-apply. The Tenants are required to properly serve the Landlords with their forwarding address, in writing, in accordance with section 38 of the *Act*.

At the hearing the Tenant submitted their new forwarding address, as listed on the front page of this Decision.

#### 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: April 22, 2015

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Residential Tenancy Branch

