



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on January 27, 2015 for return of her security and pet damage deposits.

### Preliminary Issues

The Tenant appeared for the hearing and provided affirmed testimony. There was no appearance by the Landlord for the 15 minute hearing. However, the Landlord did submit documentary evidence prior to the hearing.

The Tenant testified and provided evidence to verify that she had served a copy of her Application and notice of this hearing to the Landlord by registered mail. As the Landlord had provided documentary evidence prior to this hearing, I find this is sufficient evidence to indicate the Landlord was served with the required documents pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”).

The Landlord had indicated in her written evidence that she was not provided with a forwarding address by the Tenant. Therefore, at the start of the hearing, I asked the Tenant whether she had complied with Section 38(1) of the Act in giving the Landlord a forwarding address at the end of the tenancy.

The Tenant explained that she had not done so because her mailing address was a post office box address which has always remained the same throughout the tenancy and that the Landlord is aware of this mailing address. The Tenant was informed that this was not sufficient to comply with Section 38(1) of the Act because, irrespective of the nature of the a mailing address remaining unchanged throughout a tenancy, a Tenant must still conform with the Act and provide the Landlord with a forwarding address in writing before the Landlord’s requirement to deal with it is initiated.

Based on the foregoing, I find that the Tenant's Application is premature and accordingly I dismiss the Tenant's Application.

However, it came to my attention from the Landlord's evidence that she has made an Application to keep the Tenant's deposits using the address of the Tenant documented on the Tenant's Application. That hearing is scheduled to be heard with me on February 1, 2016 (the file number for which appears on the front page of this Decision).

The Tenant confirmed the mailing address on her Application and explained that while she had received the Landlord's evidence which indicated an Application had been made, no documents relating to the Landlord's scheduled hearing have been served to her. The Tenant was informed that the Landlord had attempted to have the Landlord's Application to be heard at the same time as the Tenant's Application. However, as the Landlord had failed to appear, the Landlord's Application could not be considered.

Therefore, the Tenant was informed that she should wait to be served notice of the scheduled hearing for the Landlord's Application by the Landlord. After this point, the issue of the Tenant's security and pet damage deposit will be determined.

The Tenant was encouraged to work with the Landlord in coming to a settlement agreement in relation to this dispute. The hearing was concluded and the Tenant exited the hearing. Shortly after the Tenant exited the call and, before I was able to close out the hearing, the Landlord dialed in the same hearing and apologised for being late. I informed the Landlord that the hearing had been concluded and that no further discussion could be had in the absence of the Tenant.

The Landlord explained that the documents for the February 1, 2016 hearing were in the process of being served by registered mail to the Tenant. Therefore, the issue of the Tenant's deposits will be dealt with in the Landlord's hearing as the Landlord has applied to keep them. The Landlord was also encouraged to work with the Tenant in settling the matter before the next hearing.

The parties are cautioned that they are obligated to submit any evidence that intend to rely on at the new hearing for the file number relating to the Landlord's Application. Any evidence submitted for this hearing will not be before me at the hearing of February 1, 2016 as this file is now closed.

The Landlord also bears the burden of proof to show that the service of documents for the February 1, 2016 hearing have been effected in accordance with the Act.

Conclusion

The Tenant's Application is premature and is therefore dismissed. The Landlord has made an Application to keep the Tenant's security deposit which is scheduled to be heard on February 1, 2016.

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 10, 2015

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Residential Tenancy Branch

