



# 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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. Based on this evidence, I find that the landlord has been properly served with the tenant's Notice of Hearing Package and the submitted documentary evidence. The landlord submitted a 2 page written submission of late evidence. The tenant confirmed receipt of the package a few days before the hearing and objected to it's submissions. The landlord's written submission were excluded as they were filed late and contrary to the Rules of Procedure. The landlord was then allowed to orally enter his submissions in his direct testimony.

### Preliminary Issue

The tenant has provided a monetary worksheet which details her monetary claim. It states a total claim of \$310.50 which contains,

\$300.00 for the return of the security deposit  
\$10.50 for the recovery of Registered Mail Costs

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions

regarding costs are provided for in court proceedings, they are specifically not included in the Act. The tenant's claim for recovery of the Registered Mail cost is excluded. The hearing proceeded on the tenant's application for return of the \$300.00 security deposit and recovery of the filing fee

The landlord stated in his direct testimony that the tenancy ended over two years ago and that the tenant failed to provide a forwarding address in writing to the landlord.

Both parties agreed that this tenancy began on December 1, 2011 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 10, 2011. Both parties agreed that the tenancy ended on April 1, 2013. Both parties agreed that the tenant failed to provide her forwarding address in writing at the end of the tenancy. The landlord stated that he did not receive the tenant's forwarding address in writing until he received the tenant's notice of hearing package on her application dated March 31, 2015. The tenant has stated that although she did not provide her forwarding address in writing to the landlord, the landlord was well aware of the tenant's place of employment. The tenant has also submitted documentary evidence of a demand letter dated March 17, 2015 and a copy of the Canada Post Registered Mail Customer Receipt. A search of the Canada Post website shows that the package was received by Canada Post on March 19, 2015 and received by the landlord on March 23, 2015.

Section 39 of the Residential Tenancy Act (the Act) states,

**Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Based upon the direct testimony of the tenant, she did not provide her forwarding address in writing to the landlord at the end of the tenancy. The tenant's evidence that the landlord knew where she worked was not disputed by the landlord. However, the

Act is clear. The tenant must give to the landlord her forwarding address in writing. I prefer the evidence of the tenant over that of the landlord in that the tenant provided her forwarding address in writing in a demand letter dated March 17, 2015 which the landlord received on March 23, 2015 as confirmed by the tenant's documentary evidence. I find that the limitation period of 1 year for the tenant providing her forwarding address in writing as per section 39 to fall on April 1, 2014 as the tenancy ended on April 1, 2013. The landlord received from the tenant the forwarding address in writing on March 23, 2015 which is almost two years past the end of the tenancy. The landlord may keep the security deposit as the tenant has extinguished her right to the return of the security deposit. The tenant's application is dismissed.

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: September 15, 2015

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Residential Tenancy Branch

