



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the tenants' application for return of the security deposit and return of monies paid to the landlord for utilities. One of the co-tenants appeared at the hearing and she confirmed that she was representing both tenants. The landlord did not appear at the hearing. The tenant testified that the hearing documents were sent to the landlord at his address of residence via registered mail on September 26, 2016 but that the mail was returned because it was refused by the landlord. The tenant orally provided a registered mail tracking number as proof of service. Under section 90 of the Act, a person is deemed to have received mail five days after mailing even if they refuse to accept or pick up their mail. Based upon the evidence before me, I deemed the landlord to have received notification of this proceeding five days after the hearing documents were mailed on September 26, 2016 and I continued to hear from the tenant without the landlord present.

### Issue(s) to be Decided

1. Are the tenants entitled to return of the security deposit?
2. Have the tenants established an entitlement to compensation for amounts they paid to the landlord for utilities?

### Background and Evidence

The tenancy agreement submitted into evidence provides that the six month fixed term tenancy started on February 1, 2016 and was to continue on a month to month basis after the expiry date of August 1, 2016. The tenants paid a security deposit of \$475.00 and were required to pay rent of \$950.00 on the first day of every month. The tenant stated that they moved out of the rental unit on July 31, 2016 or August 1, 2016 although proper notice was not given. In the details of dispute, the tenants submitted that tenancy ended August 2, 2016.

The tenants seek return of the security deposit. The tenant stated that the landlord did not invite the tenants to participate in a move-in or move-out inspection of the rental unit. The tenant stated that the tenants did not authorize the landlord to retain the security deposit; nor, did the landlord make a claim against the security deposit. The tenant testified that she provided the landlord with a forwarding address via text message "a few days after" they filed this application.

The tenants also seek \$400.00 from the landlord to recover amounts they paid to the landlord for hydro, gas and cable. The tenant acknowledged that she did not have documentary evidence to show the utility payments made to the landlord but estimated that they paid from \$150.00 to \$175.00 every month for utilities. The tenant explained that when the tenants entered into the tenancy agreement they did not know they had to pay for utilities in addition to their monthly rent but they paid the amount the landlord requested throughout the tenancy.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Under section 38 of the Act, if a landlord does not have the proper authorization to retain a security deposit, a landlord must refund or file a claim against a security deposit within 15 days of the tenancy ending or receiving the tenants' forwarding address in writing, whichever date is later. In this case, the tenant provided oral testimony that a forwarding address was sent to the landlord via text message "a few days after" the application was filed.

Section 88 provides for the ways a document must be served upon the other party. Sending a text message or email is not a permitted method of service under section 88. Further, filing for return of a security deposit before providing a forwarding address is premature. In light of the above, I find the tenants failed to demonstrate that they met their obligation to provide the landlord with a forwarding address in writing and I find their application to be premature. Accordingly, I decline to further consider their application for return of the security deposit.

The tenants have one year from the time the tenancy ends to provide the landlord with a forwarding address in writing by serving it upon him in one of the ways permitted under section 88 of the Act. If the tenants do so and the landlord fails to refund or file a claim within 15 days of receiving their forwarding address the tenants have liberty to reapply for double the security deposit.

As for the tenants' request to recover amounts paid for utilities, I find the tenants did not establish an entitlement to recover such amounts. A party to a tenancy agreement may seek compensation against the other party under sections 7 and 67 of the Act where the other party has violated the Act, regulations or tenancy agreement. The tenancy agreement provides that there are no utilities included in the monthly rent. I find a reasonable person would interpret this to mean they have to pay for their own utilities in addition to rent. It is upon every person who enters into a contract, including a tenancy agreement, to read and understand the terms they are agreeing to before signing the agreement. As such, I find the tenants failed to demonstrate that the landlord violated the tenancy agreement in collecting utilities payments from the tenants. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

### Conclusion

The tenants' request for return of the security deposit was premature and it is dismissed with leave to reapply.

The tenants' request to recover utilities paid to the landlord is dismissed without 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: January 24, 2017

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Residential Tenancy Branch