



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on June 15, 2009 for a fixed term period of one year and thereafter reverting to a month to month tenancy. The tenancy ended on May 15, 2016. Rent for this unit was \$1,750.00 per month and was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$875.00 at the start of the tenancy. The tenant testifies that the landlord did not complete a move in or a move out condition inspection report with the tenant at the start and end of the tenancy. The tenant testified that he provided the landlord with his forwarding address by text message on May 15,

2016 and email on May 24, 2016. The landlord did not respond to either the text message or the email.

The tenant testified that he did not have the landlord's address for service as he could not get his tenancy agreement at the time. The tenant did ask the landlord in his email to provide an address. The landlord did not do so until August 15, 2016.

The tenant testified that the landlord has not returned the tenant's security deposit and therefore the tenant seeks to recover this from the landlord. The tenant agreed at the hearing that his address on his application is his forwarding address.

The landlord testified that he has not received an email from the tenant. The landlord asked the tenant where he sent the email. The tenant responded that he sent it to the landlord's work email. The landlord testified that he was no longer working at that place of work when the tenant sent the text and mail and therefore would not have access to either of the tenant's messages. The landlord referred to the tenancy agreement provided in his documentary evidence which shows the landlords address for service and testified that this is still his address. The landlord agreed that he did not complete the move in condition inspection report and only a walkthrough of the unit was done at the start of the tenancy. The unit had been renovated and the parties did not think it was necessary to do an inspection report.

### Analysis

The tenant has applied for the return of the security deposit; however the tenant must provide a forwarding address in writing. The tenant has insufficient evidence to show the landlord received his forwarding address by text or email as they were sent to an old work account and cell phone. I must therefore find the tenant has not given the landlord a forwarding address in writing, as required by the *Residential Tenancy Act (Act)* s. 38, prior to applying for arbitration.

Therefore 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 stated that the address on the application for dispute resolution is his current address; therefore the landlord is now considered to have received the forwarding address in writing as of today **February 16, 2017**.

As the landlord failed to complete a move in condition inspection report pursuant to s. 23(4) of the *Act* then in accordance with s. 24(2) of the *Act* the landlord has extinguished his right to file a claim against the security deposit for damages. The landlord therefore has 15 days from today's date to return the tenant's security deposit. 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*.

#### Conclusion

The tenant's application is premature and is dismissed 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: February 16, 2017

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Residential Tenancy Branch