



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover the security deposit; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. Neither party provided evidence within the time frame specified under the rules of procedure for evidence namely rules 3.11, 3.14 and 3.15. Therefore oral evidence was provided by the parties at the hearing. I have reviewed all oral evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to an Order for the landlord to comply with the Act?

### Background and Evidence

The parties agreed that this tenancy started on November 28, 2015 for a fixed term tenancy of five months. The tenants vacated the rental unit at the end of this term on April 30, 2016. The tenants paid a monthly rent of \$3,600.00 which was due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$1,800.00 on December 06, 2015 which the landlord continues to hold in trust.

The tenants testified that they dropped off their forwarding address to the landlord's house but did not provide testimony as to when they did this. The tenants testified that they also provided an email to the landlord addressing the landlord's accusations about damages to the rental unit and providing their forwarding address again. The tenants testified that this email was sent on May 11, 2016 at 9.40 a.m. The landlord responded to this email at 11.50 a.m. and said "see you in court".

The tenants testified that the landlord has withheld all the security deposit without written permission to do so. The tenants testified that the address on their application is their current address. The tenants seek to recover the security deposit of \$1,800.00.

The landlord testified that she did not receive the tenants' forwarding address to her home or by email. The landlord does recall sending the tenants an email saying she would see them in court but does not recall an address for the tenants being included on their email. The landlord testified that she has withheld the security deposit due to unpaid utilities and for damage.

### Analysis

Section 38(1) of the *Act* says that a landlord (or the person acting as an agent) has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution.

The tenants have provided insufficient evidence to show that a forwarding address was given to the landlord in writing or by email. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Consequently, without further corroborating evidence from the tenants to meet the burden of proof in this matter I find their application to recover the security deposit is

premature; however, the tenants confirmed at the hearing that the address on their application for Dispute Resolution is their current forwarding address. As such I find the landlord has received the tenants' forwarding address as of today's date for the purposes of the Act. The landlord has 15 days from today's date to either return the security deposit in full to the tenants or file an application to keep it.

With regard to the tenants' application for an Order for the landlord to comply with the *Act*, as this tenancy has ended no orders will be issued to the tenants concerning this as there is no longer a tenant/landlord relationship between the parties and any orders would not be enforceable.

As the tenants' application is unsuccessful the tenants must bear the cost of filing this application.

#### Conclusion

The tenant's application 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*.

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Dated: February 20, 2017

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Residential Tenancy Branch