



# 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 in response to the Tenants' Application for Dispute Resolution (the "Application") filed on May 29, 2017 for double the return of the security deposit, and to recover the filing fee from the Landlord.

One of the Tenants and the Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed personal service of the Tenant's Application on May 29, 2017 and her evidence which comprised of a written letter dated May 12, 2017 detailing the Tenants' forwarding address. The Tenant confirmed receipt of the Landlord's documentary and digital evidence.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence on the relevant issues below, make submissions to me, and cross examine the other party.

### Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

The parties confirmed that this tenancy started on January 1, 2017 on a month to month basis. Rent of \$2,400.00 was payable on the first day of each month. The Landlord collected from the Tenant a \$2,600.00 security deposit at the start of the tenancy which the Landlord still retains. The Landlord explained that at the time he took the security deposit, he was not aware that the amount was in excess of what he was allowed to request as he had just come from a different province where the laws were different. The Tenant testified that she vacated the rental unit on April 30, 2017. The Tenant initially testified that she gave the Landlord her forwarding address in an email. The Tenant could not recall the date the email was sent but confirmed that the Landlord did not respond to it. The Tenant then testified that she served a letter containing her

forwarding address dated May 12, 2017 to the Landlord personally on May 29, 2017 with the Application.

The Landlord denied receipt of the May 12, 2017 by email but confirmed that he received it with the Application when it was served to him on May 29, 2017. The Landlord denied service of the letter by mail.

### Analysis

Section 38(1) of the *Residential Tenancy Act* (the “Act”) states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

The Act does not allow service of documents by email, unless a party can prove an email was actually received by the intended recipient, such as a response to that email.

The Landlord disputed service of the Tenants’ forwarding address by mail. The Tenants provided no supporting or corroborating evidence that the Landlord was served the May 12, 2017 letter by mail.

Even, if the Tenants had provided evidence she had sent the Landlord mail, taking into account the deeming provisions of the Act which allows five days for a document to be deemed received, the Tenants still did not allow sufficient time before filing the Application.

The only conclusive evidence before me is that the Tenants served their forwarding address with their Application, which the Landlord did not get until May 29, 2017.

I find that it would be an inconsistent application of the law to conclude that the Tenants has provided the Landlord with a forwarding address in writing if the Tenants only provided the address when the landlord was served with the Application. I find that the legislation contemplates that the forwarding address be provided, in writing, prior to a tenant filing an Application.

I find it would be unfair to the Landlord to conclude differently, as the Landlord may conclude that it is too late to make a claim against the deposit because the matter is already scheduled to be adjudicated.

As a result, I find the Tenants filed this Application prior to providing a forwarding

address to the Landlord in writing. Therefore, the Tenants' claim is premature and I hereby dismiss the Tenants' Application with leave to reapply.

The Tenant confirmed the forwarding address during the hearing. This was confirmed with the Landlord and is also documented on the front page of this Decision for clarity purposes. As a result, I put the Landlord on notice that he has 15 days from the date of this hearing, until November 21, 2017, to either return the Tenants' security deposit and/or make an application to claim against it.

The Landlord is cautioned to take into account any provisions of the Act that may have extinguished the right of the Landlord to make a claim from the Tenants' security deposit based on any alleged claim(s).

### Conclusion

The Tenants' Application for the return of their security deposit is premature. The Landlord is obligated to deal with the Tenants' security deposit in accordance with the Act by November 21, 2017. The Tenants are at liberty to re-apply if the Landlord fails to comply with the Act.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 06, 2017

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Residential Tenancy Branch