



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. The Tenant states that the original Landlord who is named as Landlord in this application (the “Landlord”), lived out of country during the tenancy. The Tenant states that the Landlord had no local agent. The Tenant states that tenancy was ended by the Landlord who sold the rental unit to a third party (the “Purchaser”). The Tenant states that the Landlord served the Tenants a two month notice to end tenancy for landlord’s use with an effective move out date of July 4, 2017. The reason stated on the Notice was that the purchaser intended to move into the unit. The Tenant states that it was unable to enter an out of country address using the online application system. The Tenant states that for this reason the Tenant used the dispute address as the Landlord’s address but that the application for dispute resolution and notice of hearing (the “Materials”) was sent to the Landlord’s out of country address by registered mail and that it was returned on the basis that the Landlord was not at the address listed for delivery. The Tenant did not name the Purchaser as a Respondent in the application for dispute resolution.

Section 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party. Section 89(1) of the Act provides that an application must be given to a landlord in one of the following methods:

- by leaving a copy with the person;
- by leaving a copy with an agent of the landlord;
- by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.

Section 93 of the Act that provides that the obligation of a landlord in relation to a security deposit or a pet damage deposit runs with the land or reversion. Section 1 of the Act defines landlord, to include, inter alia, the heirs, assigns, personal representatives and successors in title to the owner.

Based on the Tenant's evidence of the Landlord not being at the address the materials were sent, I find that the Tenant did not serve the Landlord at the Landlord's residential address. Further, given the evidence of the sale of the unit it may be that the Tenants have a claim against the purchaser in relation to recovery of the security deposit. For these reasons I dismiss the application 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 07, 2018

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Residential Tenancy Branch