



# 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 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit, for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act)*, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on September 31, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail, at the service address noted on the Application. She stated that the service address was provided to her by the Landlord and she understands it is the Landlord's business address.

The Tenant stated that on September 31, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Agent for Landlord, via registered mail, at the mailing address listed on the tenancy agreement.

The Tenant submitted Canada Post documentation that corroborates this testimony. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing. The hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Tenant stated that:

- the tenancy began on July 01, 2009;
- the Landlord did not make arrangements to complete a condition inspection report with the Tenant when this tenancy began;
- a security deposit of \$500.00 was paid on, or about July 01, 2009;
- the tenancy ended on August 01, 2017;
- the Tenant sent her forwarding address to the Landlord, via email, on August 30, 2017;
- the Tenant and the Landlord regularly communicated by email;
- the last email the Landlord sent the Tenant was on June 25, 2017;
- the Landlord did not respond to the email the Tenant sent on August 30, 2017 and the Tenant does not know if the email was received by the Landlord;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- the Residential Tenancy Branch has not ordered the Tenant to pay any money to the Landlord.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As this is the Tenant's Application for Dispute Resolution, she bears the burden of proving that she provided that Landlord with her forwarding address, in writing.

Section 88 of the *Act* outlines the manner in which a forwarding address can be served to a landlord, which are:

- (a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or 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;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

There is no evidence that the Tenant provided her forwarding address to the Landlord in a manner prescribed by section 88 of the *Act*. Section 88 of the *Act* does not permit a tenant to provide a forwarding address via email.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. In circumstances where a landlord acknowledges receiving a forwarding address by email or there is proof that a landlord has received that forwarding address by email, I may find that a landlord was sufficiently served with a tenant's forwarding address.

In these circumstances the Tenant submitted no evidence or testimony to suggest that the Landlord received the forwarding address the Tenant sent via email. I therefore cannot conclude, in these circumstances, that the Landlord received the Tenant's forwarding address.

As there is insufficient evidence that the Landlord received the Tenant's forwarding address, in writing, I cannot conclude that the Landlord is required to comply with section 38(1) of the *Act*.

As the Tenant filed this Application for Dispute Resolution prior to the Landlord receiving her forwarding address, I find that she has filed this Application for Dispute Resolution prematurely. I therefore dismiss her Application for Dispute Resolution, with leave to reapply.

The Tenant retains the right to serve the Landlord with her forwarding address, in a manner that complies with section 88 of the *Act*. The Tenant retains the right to file another Application for Dispute Resolution to recover her security deposit if the Landlord fails to comply with section 38 of the *Act* after the forwarding address is properly served to the Landlord.

Conclusion:

The Tenant's Application for Dispute Resolution 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: March 08, 2018

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Residential Tenancy Branch