



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for the recovery of the filing fee paid for this application.

The two Landlords and a family member acting as a representative for the Landlord were present for the duration of the teleconference hearing, as was the Tenant.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding documents and the Tenant’s evidence, although as they were sent to the address of the rental unit, the mail was not received until recently after the Landlords were notified there was mail for them at the rental unit. As the Landlord confirmed that they received the documents in time to review them and were willing to continue with the hearing, I accept that they were sufficiently served, pursuant to Section 71(2)(c) of the *Act*.

The Tenant confirmed that she received a copy of the Landlord’s evidence, although stated she received documentary evidence only, and did not receive any photos. As the Landlord confirmed that no photos were sent to the Tenant as part of their evidence package, any photos from the Landlords that were submitted to the Residential Tenancy Branch will be excluded as evidence in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

### Preliminary Matters

During the hearing, the spelling of one of the Landlord's names was clarified. The name was amended on the Application for Dispute Resolution.

The address of the Landlord was also clarified during the hearing as it was listed as the address of the rental unit, where the Landlords do not reside. The address was amended to an address for service confirmed by the Landlords. These amendments were made pursuant to Section 64(3)(c) of the *Act*.

### Issues to be Decided

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

Is the Tenant entitled to the recovery of the filing fee paid for this Application for Dispute Resolution?

### Background and Evidence

The Tenant provided testimony that she moved into the rental unit approximately five years ago. The Landlords testified that they purchased the property on January 15, 2018, while the Tenant was already residing in the rental unit. The parties agreed that monthly rent was \$1,100.00 and a security deposit of \$525.00 and a pet damage deposit of \$250.00 was paid at the outset of the tenancy for a total deposit of \$775.00.

The Landlords testified that a mutual agreement to end the tenancy was signed in January 2018, to end the tenancy on March 31, 2018. However, they stated that the Tenant did not move her belongings out of the unit until April 3, 2018 and the keys were returned to them on April 5, 2018.

The Tenant provided testimony that she moved out of the unit on April 2, 2018 and returned keys to the Landlord on April 3, 2018, with the remaining keys provided on April 12, 2018.

The Tenant stated that her forwarding address was provided to the Landlords by mail, but the mail was returned to her. She testified that as she did not have the service address for the Landlords, she mailed a letter with her forwarding address to the rental unit.

The Landlords stated that since they do not reside at the rental unit, they did not receive the forwarding address, as they do not always get mailed passed along to them. They submitted into evidence the mutual agreement to end the tenancy which included their address for service. The Tenant testified that she did not have their address.

Although the parties were in disagreement as to what occurred when they met to complete the inspection at move-out, they agreed that the Tenant's forwarding address was not provided on the Condition Inspection Report.

The Landlords testified that they first received the Tenant's current address when they received the Notice of Dispute Resolution Proceeding package for this hearing.

### Analysis

I refer to Section 38(1) of the *Act* which states the following:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the Landlords testified that they did not received the Tenant's forwarding address and the Tenant sent her forwarding address to an incorrect address for the Landlords, I find that the Tenant's forwarding address has not yet been provided. Receiving an address through a Dispute Resolution proceeding is not a sufficient method of service under the *Act*.

Due to not having received the Tenant's forwarding address yet, I find the Tenant's application for the return of the security deposit premature as Section 38(1) of the *Act* does not apply until the tenancy ends and a forwarding address is provided in writing.

As such, during the hearing, the Tenant confirmed her full forwarding address and the Landlords repeated it back to ensure it was correct. Pursuant to Section 71(2)(b) of the *Act*, I determine that the Landlords have been duly served with the Tenant's forwarding address as of the date of this hearing, July 24, 2018.

The Landlords now have 15 days from the date of this hearing to comply with Section 38(1) of the *Act*. Should the Landlords not comply within the 15 days allowable under the *Act*, the Tenant may reapply for the return of the security deposit, or the return of double the security deposit in accordance with Section 38(6).

As the forwarding address is determined to have been provided as of July 24, 2018, I find that the Tenant's application for the return of the security deposit was filed prematurely. As such, I dismiss the Tenant's application with leave to reapply.

As the Tenant's application is dismissed, I decline to grant the recovery of the filing fee paid for 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*.

Dated: July 25, 2018

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Residential Tenancy Branch