



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction and Conclusion

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on February 9, 2018, wherein the Tenants requested return of their security deposit.

The hearing was conducted by teleconference on September 1, 2018 at 1:30 p.m. Both parties called into the hearing.

At the outset of the hearing the Landlord stated that the Tenants had already "lost" in their application for return of the deposit.

A review of Branch records confirms that the Tenants applied for return of their deposit on November 15, 2017. The Tenants' Application was dismissed by my colleague, Arbitrator Ceraldi, as being premature as he found that the Tenants had not provided their forwarding address in writing as required by the *Act*. In the Decision dated February 5, 2018, Arbitrator Ceraldi recorded as follows:

"Firstly, I address the tenants claim for the return of the deposits. The tenants confirmed that they have not provided the landlord their forwarding address "for security reasons". The tenants have not provided justification as to withholding their forwarding address. The tenants must provide their forwarding address to the landlord as is noted in Section 39 of the Act if they wish to make a claim for it, as the tenants have not done that, I find that they are premature in this application and I therefore dismiss this portion of their application with leave to reapply."

At the hearing before me, the Tenant, R.M. testified that by letter dated December 14, 2017 they provided the Landlord with their forwarding address. A copy of the letter was provided in evidence by the Tenants.

At the hearing before me the Tenant R.M. stated that she told Arbitrator Ceraldi on February 5, 2018 that she had provided her forwarding address in writing and he did not understand her. The Tenant further stated that she provided a copy of the December 14, 2017 letter to Arbitrator Ceraldi at the February 5, 2018 hearing.

In response to the Tenant's testimony, the Landlord stated that she did not receive the December 14, 2017 letter. She confirmed that she received a text from the Tenant instructing her to send the security deposit to the Tenant's work. The Landlord stated that she called the school (which was the address provided by the Tenant) and they stated they did not want documents sent there. She confirmed she provided this evidence to Arbitrator Ceraldi on February 5, 2018.

A Tenant must provide their forwarding address in writing to the Landlord following the end of a tenancy for two reasons. The first is that security deposits are trust funds and a Landlord must only deal with them in accordance with the *Act*, and on specific instructions from a Tenant. The second is that a Landlord must be provided an address to which to serve documents in the event the Landlord wishes to make an application for dispute resolution. Section 38 of the *Act* mandates that a Landlord has 15 days from the latter of the end of the tenancy or receipt of the Tenant's forwarding address in which to return the funds or make an Application for Dispute Resolution failing which the deposit is doubled.

The evidence before me is the same evidence that was before Arbitrator Ceraldi on February 5, 2018. I am bound by Arbitrator Ceraldi's findings with respect to the December 14, 2017 letter and the Tenants' claim that they gave their forwarding address to the Landlord prior to the February 5, 2018 hearing.

While the Tenants' November 15, 2017 Application was dismissed with leave to reapply, the expectation was that the Tenants would send the Landlord their forwarding address in writing *following* the hearing (and as required by the *Act* to allow the Landlord to server her Application on the Tenants) and would make a *new* application.

The Tenants are not permitted to attempt to reargue the same facts before a new Arbitrator in hopes of achieving a different result. Similarly, I am not able to rehear a matter which has already been argued on the same facts as I am *functus officio*, meaning that Arbitrator Ceraldi has already made findings with respect to that evidence. I am not permitted to perform an appeal function, as appeals from the Residential Tenancy Branch are heard by the B.C. Supreme Court.

I decline to hear the Tenants' Application on the basis that Arbitrator Ceraldi has already made findings and decided the Application on the same facts as was presented at the February 5, 2018 hearing.

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: September 07, 2018

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Residential Tenancy Branch