



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 2:04 p.m. in order to enable them to call into this teleconference hearing scheduled for 1:30 p.m. Tenant MOF (the tenant) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

### Preliminary Issue - Service of Application for Dispute Resolution

At the hearing, the tenant testified that they sent both landlords a copy of their dispute resolution hearing package by registered mail. However, the tenant did not have details as to when these registered mailings were sent nor did the tenant have the Canada Post Tracking Numbers available. The tenant said that they believed that a friend had retained copies of this information and requested permission to contact that friend to obtain this information. The tenant disconnected from the hearing, called their friend and reconnected with the hearing. When the tenant rejoined the hearing they attempted

to provide a Canada Post Tracking Number from a previous 2017 attempt to obtain a monetary award from the landlords. As the current application was submitted in August 2018, and the Notices of Dispute Resolution Hearing were printed on August 13, 2018, the registered mailings in 2017 did not relate to the tenants' current application nor did they provide the landlords with notification of the current hearing.

#### Analysis- Service of Application for Dispute Resolution

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (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 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 registered mail to a forwarding address provided by the tenant;...*

Section 15 of Residential Tenancy Guideline 12 on Service Provisions reads in part as follows:

*...Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report...*

The tenant provided no details to confirm that these packages were served to the tenants in accordance with section 89(1) of the *Act* by registered mail, even though I gave the tenant considerable time to retrieve this information. As I am not satisfied that the tenant has demonstrated that the landlords were properly served with copies of the tenants' application for dispute resolution or notice of this hearing, I dismiss this application with leave to reapply.

Preliminary Decision - Jurisdiction to Consider a Subsequent Application from the Tenants

Although this application is dismissed with leave to reapply, I also note that the tenants received a decision on June 2, 2017 (see first page of this decision above) for a previous attempt to recover the security deposit for this tenancy on the basis of their November 30, 2016 provision of their forwarding address to the landlords. At that time, the arbitrator appointed pursuant to the Act, referred to the following evidence, which would appear to be the same November 30, 2016 provision of the forwarding address to the landlords as the tenant referred to in the tenants' current application:

*...The tenant testified that she had provided the landlord with her forwarding address by text message on November 30, 2016, requesting that her security deposit be returned. The tenant provided a copy of her text message in her hearing, which was forwarded via email to a friend for the purpose of printing.*

*The landlord disputes the fact that he had received the tenant's forwarding address in any form.*

The previous arbitrator made the following final and binding decision with respect to the tenant's provision of the forwarding address to the landlords on November 30, 2016:

*The tenant has applied for the return of the security deposit. There is conflicting evidence regarding whether the tenant has proven that the tenant's forwarding address was provided in writing to the landlord prior to launching this application. Although the tenant maintained that she sent her forwarding address to the landlord by text message, the landlord said that this forwarding address was never received. I find that the tenant did not provide sufficient evidence to support her claim that the landlord was provided with her forwarding address in writing. The email submitted in evidence by the tenant does not contain any confirmation of service, nor is there any indication that the recipient was the landlord.*

*As I am not satisfied that the tenant has demonstrated provision of her forwarding address to the landlord in writing, I dismiss the tenant's application with leave to reapply. The tenant must provide their forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenant's security deposit, or make an application for dispute resolution. If the landlord fails to comply with section 38 of the Act, the tenant may reapply...*

It is unclear as to whether or not the current application for dispute resolution relates to a subsequent provision of the tenants' forwarding address in writing to the landlords after June 2, 2017, as was identified as being necessary in the previous arbitrator's

June 2, 2017 decision. In order to reapply for the return of their security deposit, the tenants will need to demonstrate that they have submitted their forwarding address for the purposes of obtaining a return of their security deposit to the landlords **in writing** following the previous arbitrator's June 2, 2017 decision. An application for dispute resolution does not qualify as provision of the tenants' forwarding address in writing.

In the event that the tenants are seeking a return of their security deposit on the basis of the evidence considered by the previous arbitrator on June 2, 2017 or that was available at that time to submit at the May 26, 2017 hearing of that application, they should be aware that the June 2, 2017 decision would be final and binding and that the legal principle of *res judicata* would prevent another arbitrator from considering their application. I include this information as the tenants will need to demonstrate that they have provided the landlords with their forwarding address in writing after receiving their June 2, 2017 decision regarding their previous application to obtain a return of their security deposit.

### Conclusion

I dismiss the tenants' application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution, for providing their forwarding address to the landlords in writing, or for returning security deposits at the end of a tenancy.

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: December 11, 2018

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Residential Tenancy Branch