



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

The landlord, the landlord's assistant (collectively "the landlord") and tenant BE attended the hearing. Each party was each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants' application, but contended that because it was received outside the three day time limit of the legislation it was prejudicial to the landlord. In this case, the landlord confirmed receipt of the hearing package sent October 17, 2018, some two months prior to the hearing. I am satisfied the landlord has been put on sufficient notice of the claim against her and that she has had adequate time and opportunity to respond to the application. Although the tenants did not serve the application in accordance with the *Act*, I find pursuant to section 71 (2)(b) of the *Act*, that the application was sufficiently served for the purposes of the *Act*.

The tenant testified that on December 14, 2018 she forwarded a subsequent evidence package via registered mail to the landlord; however the landlord denied receipt of this package. The tenant provided a Canada Post receipt and tracking number as proof of service. The address used for service was the landlord's service address as provided on the tenancy agreement. The Canada Post website shows that the documents were received December 18, 2018. Therefore, I find the landlord was served the tenants' evidence package pursuant to Section 88 of the *Act*.

The tenant confirmed receipt of the landlord's evidence. As the tenant did not raise any issues regarding service of the landlord's evidence, I find that the tenants were duly served with these documents in accordance with sections 88 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on November 28, 2016 on a fixed term until November 30, 2017. Rent in the amount of \$1,950.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$975.00 at the start of the tenancy, which the landlord still retains in trust. The tenants vacated the unit October 30, 2017.

The tenant testified that separate written notice of the tenants' forwarding address was provided as part of the tenants' hearing package sent by way of registered mail on October 17, 2018. The tenant testified that neither tenant authorized the landlord to retain the deposit; therefore they seek the return of their security deposit, doubled.

The landlord testified that separate written notice of the tenants' forwarding address did not form part of the tenants' hearing package.

During the hearing, the tenant confirmed the address for service on the application for dispute resolution is the correct and current forwarding address.

### Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. A tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

The evidence before me does not include written notice of the tenants' forwarding address. In the absence of corroborating evidence that the forwarding address formed part of the hearing package, I find that the forwarding address was only provided by the tenants on the application for dispute resolution. This method does not meet the requirement of separate written notice.

The tenant provided the tenants' correct forwarding address during the hearing. Therefore I find that the landlord has now been served with the forwarding address and must deal with the deposit pursuant to section 38 of the *Act*. The January 4, 2019 decision date becomes the date the landlord received the tenants' forwarding address. Accordingly, the tenants' application for the return of the security deposit is dismissed with leave to reapply.

### Conclusion

The tenants' application for the return of the security deposit 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: January 04, 2019

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Residential Tenancy Branch