



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHERRY CREEK PROPERTY SERVICES LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

In this dispute, the tenant sought the return of her security deposit pursuant to section 38 of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on April 11, 2019 and a dispute resolution hearing was held on June 25, 2019. The tenant and the landlord’s agent attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and call witnesses. (I note, however, that after hearing from the tenant about the provision of her forwarding address I did not hear testimony from the landlord.) The parties did not raise any issues of service.

I reviewed evidence submitted that met the *Rules of Procedure* but only considered evidence relevant to the preliminary issue of this application.

### Preliminary Issue: Tenant’s Forwarding Address Provided in Writing

The tenant testified and confirmed that the tenancy began on March 1, 2009 and ended on January 31, 2019. Monthly rent was \$520.00, and the tenant paid a security deposit of \$250.00. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The tenant further testified that she phoned the landlord and gave the landlord her forwarding address on February 6, 2019. I asked the tenant whether she had provided her forwarding address in writing to the landlord, to which she responded “no.”

As explained to the parties during the hearing, the legislation is particularly precise regarding the processes by which tenants must follow in regard to the return of a

security deposit. Similarly, the Act lays out precise steps that a landlord must follow in order to claim against a security deposit.

Subsection 38(1) of the Act reads as follows:

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 landlord had not received the tenant's forwarding address in writing, the tenant's application is premature.

The landlord received the tenant's address in the Notice of Dispute Resolution Proceeding documents, as the tenant correctly pointed out, but pursuant to *Residential Tenancy Branch Practice Directive 2015-01* (the "Directive"), a forwarding address only provided by the tenant on the Notice of Dispute Resolution Proceeding does not meet the requirement of a separate written notice and may not be deemed as providing the landlord with the forwarding address. Additionally, landlords who receive the forwarding address in the Notice of Dispute Resolution Proceeding may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the deposit (or deposits).

Given the above, and pursuant to the Act and the Directive, I confirmed with the tenant that her address for service is that which is included on the Notice of Dispute Resolution Proceeding, and that it is the correct and current forwarding address.

Further, pursuant to section 71(2)(b) of the Act, I explained to the landlord that they have now been served with the tenant's forwarding address and must deal with the

security deposit pursuant to section 38 of the Act. I also informed the landlord's agent that the date of the hearing is the ordered date that the landlord received the tenant's forwarding address.

Conclusion

The tenant's application is dismissed with leave to reapply.

The tenant may reapply if the landlord does not claim against, or return, the security deposit in full within 15 days of the hearing date.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 25, 2019

---

Residential Tenancy Branch