



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order. The Application was adjudicated through the Direct Request process but was adjourned to a participatory hearing as the adjudicator could not determine some service issues.

The hearing was conducted via teleconference and was attended by both tenants; the landlord and her agent.

While there was some dispute as to the service address for the landlord, I am satisfied that the tenants served the landlord at the address provided as a service address in the tenancy agreement. I accept that the landlord is currently staying at another location assisting her family and as such is not currently residing at her service address.

While both parties provided testimony and/or evidence regarding the potential of the tenants owing the landlord some monies resulting from the tenancy I advised the parties that those issues were not before me and I would not be considering them. I advised the parties that this hearing would only deal with whether or not the landlord did what they were supposed to do with the security deposit at the end of the tenancy, pursuant to the requirements under the *Residential Tenancy Act (Act)*.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The parties submitted into evidence a copy of a tenancy agreement for a tenancy beginning on March 1, 2019 for a monthly rent of \$1,780.00 due on the first of each month with a security deposit of \$890.00 paid on February 1, 2019. The tenants vacated the rental unit on May 1, 2020.

The tenants submitted that they provided their forwarding address by email on May 18, 2020. They also provided a copy of a text message they sent to the landlord on the same date and it included a copy of their request letter with the forwarding address. The landlord submitted that she received a text message on or about May 18, 2020 that informed her that the tenants had left but that it did not include the tenants' forwarding address.

The landlord did confirm that she received the Notice of Dispute Resolution Proceeding – Direct Request dated June 18, 2020 some time in June and that she also received the Notice of Dispute Resolution Proceeding dated July 7, 2020 sometime in July 2020. The landlord also acknowledged that she had the specific pages that included the tenants' service address.

As noted above, both parties provided significant testimony in regard to the potential for the tenants owing the landlord some money. Specifically, I note that the landlord submitted testimony that she felt the tenants owed her for at least one-half month's rent and as such she was not going to return the deposit. The landlord confirmed she had not returned the deposit or submitted an Application for Dispute Resolution by the time of this hearing.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, the burden rests with the tenants to provide sufficient evidence to establish that they provided the landlord with their forwarding address.

The landlord disputes receiving the tenant's forwarding address in the text message on or about May 18, 2020 and that she got an email from the tenants. However, I prefer the tenants' submissions on this point as I find that it is unlikely that the tenants would send the landlord either a text or email 18 days after they vacated the rental unit solely to advise the landlord that they had ended their tenancy. Furthermore, the tenants have provided a photograph of the text message they sent to the landlord with the attachment.

Even if I were to accept the landlord's version, I also note that the landlord had received, from the tenant, in writing, the two Notice of Dispute Resolution Proceedings

of June 18, 2020 and July 7, 2020. As such, I am satisfied the tenants have met their requirements to provide the landlord with their forwarding address in writing.

As to when the landlord received the forwarding address, I rely on the latest possible date of the three scenarios noted above – the May 18, 2020 text message; the June 18 Notice of Dispute Resolution Proceeding – Direct Request; and the July 7, 2020 Notice of Dispute Resolution Proceeding setting up this hearing.

Allowing for the use of mail to serve the landlord with the latest Notice of Dispute Resolution Proceeding I find that the landlord received the tenants' forwarding address no later than July 15, 2020. I also find the landlord has not returned the deposit or filed an Application for Dispute Resolution as of the date of this hearing. As a result, I find the landlord had until July 30, 2020 to either return the deposit in full or file an Application for Dispute Resolution to comply with the requirements set forth in Section 38(1).

As a result, I find the tenants are entitled to return of double the security deposit in the amount of \$1,780.00, pursuant to Section 38(6).

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,880.00** comprised of \$1,780.00 for double the amount of the security deposit and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 27, 2020

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Residential Tenancy Branch