



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing was scheduled to deal with a tenant's Application for Dispute Resolution for return of the security deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I heard the tenants sent two proceeding packages to the landlords in a single registered mail package. A registered mail receipt, including tracking number, was provided as proof of mailing on August 28, 2020.

Both named landlords appeared at the hearing and both of them confirmed they understood the nature of the application made against them. Although the tenants were required to serve each respondent separately, having confirmed both of the landlords were aware of the claim against them I deemed the landlords sufficiently served pursuant to the authority afforded me under section 71 of the Act.

As another preliminary matter, I noted that there were only two tenants named on the tenancy agreement but there were four tenants named on the tenant's Application for Dispute Resolution. I heard the tenants listed their children as tenants in making the Application for Dispute Resolution when fact the children were occupants. I amended the style of cause to exclude the tenant's children as named parties.

The landlord pointed out that the tenants had misspelled his first name in making the Application for Dispute Resolution. The landlord provided the correct spelling of his first name during the hearing and I noted it was the same as that appearing on the tenancy

agreement. Accordingly, I amended the style of cause to correctly spell the landlord's first name.

Issue(s) to be Decided

Are the tenants entitled to return of the security deposit?

Background and Evidence

The one year fixed term tenancy started on March 1, 2020 and the tenants paid a security deposit of \$800.00. The tenants were required to pay rent of \$1600.00 on the first day of every month.

The landlords did not prepare a move-in inspection report.

The tenants testified that they vacated the rental unit on July 1, 2020. The landlords testified that they received the tenant's notice to end tenancy on July 9, 2020 and the tenants vacated the rental unit on August 1, 2020. In making this Application for Dispute Resolution, the tenants indicated the tenancy ended on July 31, 2020.

I was provided consistent testimony that the tenants did not authorize the landlords to retain the security deposit in writing; the landlords did not refund the security deposit to the tenants; and, the landlords have not filed a Landlord's Application for Dispute Resolution to make a claim against the security deposit.

The tenants submitted that the landlord had orally told the tenants they would not receive a refund of their security deposit.

The tenants acknowledged that they did not provide their forwarding address to the landlords prior to filing this Application for Dispute Resolution. Rather, the tenant submitted that the landlords had their email address and the landlords could have refunded the deposit by e-transfer since that is how they paid rent.

The tenant also pointed out that in sending the registered mail to the landlords on August 28, 2020 the landlord was provided with their mailing address on the envelope. I instructed the landlord to read the tenant's address that was provided with the registered mail sent to them on August 28, 2020. The landlord did so and I noted it was consistent with the mailing address provided by the tenants on the tenant's Application for Dispute Resolution. The tenants confirmed that the mailing address read aloud by

the landlord and appearing on their Application for Dispute Resolution is still current. I have reproduced the tenants' mailing address on the cover page of this decision.

I gave the parties an opportunity to settle their dispute during the hearing; however, the landlords were not interested.

I gave the parties my findings orally during the hearing, and put the landlords on notice that they are required to take action within 15 days of today's date to administer the security deposit in a manner that complies with the Act, as described in detail in the analysis section below.

### Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either: refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenancy has ended in July 2020 or August 2020 but the tenants did not provide a forwarding address to the landlord in writing prior to filing this Application for Dispute Resolution. Accordingly, I find the tenants were premature in filing this Application for Dispute Resolution seeking return of the security deposit.

The tenant argued the landlord had their email address prior to filing this Application for Dispute Resolution and the landlords could have refunded the deposit by e-transfer. Although a landlord may refund a security deposit by e-transfer, a landlord also has the right to make a claim against the security deposit by filing a Landlord's Application for Dispute Resolution and the Landlord's Application for Dispute Resolution must be served upon the tenant in person or by registered mail; thus, requiring a forwarding address where the tenant may be served in person or by registered mail.

The Residential Tenancy Branch has developed a Practice Directive in cases where the tenant's forwarding address is only provided with the Tenant's Application for Dispute Resolution for return of the security deposit. The Practice Directive provides, in part:

**Practice Directive**

A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address.

Additionally, Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

Arbitrators are directed to not make an order for return of the Deposits (whether in the original amount or doubled as per paragraph 38(6)(b) of the Act), based on the date the Application was served or filed by the Tenant.

When Both Parties are at the Hearing

If the Landlord attends the hearing and testifies they did not have a forwarding address for the Tenant prior to the hearing the Arbitrator should:

- \* Confirm with the Tenant that the address for service on the Application for Dispute Resolution is the Tenant's correct and current forwarding address.
- \* Pursuant to paragraph 71(2)(b) of the Act, explain to the Landlord that they have now been served with the forwarding address and must deal with the Deposits pursuant to section 38 of the Act.
- \* Inform the Landlord that the date of the hearing will become the ordered date the Landlord received the Tenant's forwarding address.

The Arbitrator would then dismiss the Tenant's Application with leave to reapply. The Tenant could re-apply if the Landlord does not claim against or return the Deposits in full within 15 days of the hearing date.

In keeping with the Practice Directive, I put the landlords on notice that the mailing address provided by the tenants with the Application for Dispute Resolution sent on August 28, 2020 is the tenant's forwarding address and the landlords have now been served with a forwarding address. Accordingly, the landlords have 15 days from today's date to either: refund the security deposit; get the tenant's written consent to retain the security deposit or make deductions from the deposit; or, file a Landlord's Application for Dispute Resolution to make a claim against the deposit.

Should the landlords fail to take action as set out above, the tenants may re-apply and seek doubling of the deposit.

Conclusion

The tenant's Application for Dispute Resolution was dismissed with leave.

The landlords are now in receipt of the tenant's forwarding address and the landlords are on notice that they have 15 days from today's date to comply with section 38 of the Act.

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 10, 2020

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Residential Tenancy Branch