



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence.

Extensive discussions with the tenants resulted in the tenants confirming that the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail. No date or details were provided. The tenants stated that the landlord was served with the submitted documentary evidence via Canada Post Registered Mail on November 27, 2020. I accept the undisputed evidence of the tenants and find that the landlord has been sufficiently served and are deemed served as per section 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

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim of \$675.00 for return of the security deposit. Extensive discussions with the tenants resulted in the tenants confirming that the tenancy had ended on October 31, 2020 and that the tenants forwarding address in writing was provided via email to the landlord on September 13, 2020. The tenants were unable to provide any proof of service regarding the email, only referring to a "whatsapp conversation" evidence file and referred to the copy dated "7:35pm, 9/13/2020". It states in part,

*Hi P.! We've bought a house, which means we have to give our notice. We sent an email but I wanted to message you on here as well just so you have it! Thank you for everything, we've loved living here. Our last date will be October 31, 2020.*

During the hearing the tenants confirmed that the forwarding address in writing was not served to the landlord and was not able to clarify how the above "whatsapp conversation" was proof of service of the email notice.

The tenants stated that no consent was given to the landlord to retain any part of the security deposit nor are the tenants aware of the landlord filing an application to dispute the return of the security deposit.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, it appears that the tenants served their forwarding address requesting the return of their security deposit via email on September 13, 2020. At the time of this hearing email is not an accepted form for "in writing" for return of the security deposit. As such, I find that the tenants' application is pre-mature and must satisfy section 38(1) by providing the landlord with their forwarding address in writing for return of the \$675.00 security deposit. The tenants' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Conclusion

The tenants application 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: April 26, 2021

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Residential Tenancy Branch