



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNSD

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit and pet deposit. Both parties appeared at the hearing and had an opportunity to be heard. The parties confirmed that the tenant served notice of the hearing and the tenants' application upon the landlord by registered mail; however, the tenant did not provide a tracking number or receipt as evidence of the registered mail.

### Issue(s) to be Decided

1. Whether the tenants are entitled to return of double their security deposit and pet deposit.

### Background and Evidence

Upon hearing testimony from both parties, I make the following relevant findings concerning the tenancy. The one-year fixed term tenancy commenced October 1, 2007. The tenants had paid a \$337.50 security deposit and a \$100.00 pet deposit. The tenants vacated the rental unit on May 27, 2008 without prior notification to the landlord or a written mutual agreement to end the tenancy. The tenants left a note in the rental unit upon vacating it with a forwarding address of "General Delivery, Kelowna BC" with no postal code indicated.

The tenants claimed that the landlord had told them that if they did not like living there they should leave and that the landlord observed them moving out at the end of May 2008. The tenant confirmed that prior verbal or written notice of the tenants' intention to

vacate was provided to the landlord. Upon moving out, the tenants claimed that they left a note with the forwarding address and the keys to the rental unit in the rental unit. The tenants claimed that they were not offered the opportunity to participate in a move-out inspection and that they did not authorize any deductions from the security deposit or pet deposit in writing. The tenant claimed that he checked the two post offices located in Kelowna once per month and that there was no mail from the landlord at either post office.

The landlord denied telling the tenants to move-out and is of the position that the tenants abandoned the rental unit. The caretaker acknowledges that he observed the tenants placing old furniture next to the garbage bin at the end of May 2008 and that the tenants told him they were moving down the street but due to the hostile nature of the tenants he did not further approach the tenants to determine when they were ending the tenancy. The landlord testified that the keys to the rental unit were found in the caretaker's mailbox and after posting a Notice of Entry, entered the rental unit on June 2, 2008 to find the rental unit abandoned. The landlord did not refund the security deposit as the landlord was of the position that the tenants owed the landlord money for unpaid rent, among other things, and that the forwarding address provided by the tenants was invalid and not serviceable. The landlord claims to have sent a Statement of Account to the forwarding address provided by the tenants but the landlord did not receive a response from the tenants.

### Analysis

As the parties were informed during the hearing, the landlord's claims for damages or loss were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenants' application for dispute resolution and determine whether the landlord complied with the Act with respect to returning the security deposit.

When a tenancy ends a tenant and landlord must participate in a move-out inspection together. However, where the tenant abandons the rental unit, where the landlord conducts a move-out inspection without the tenant present, and the landlord's right to claim against the security deposit is not extinguished, I am satisfied that the tenant's abandoned the rental unit and the landlords claim against the security deposit was not extinguished.

Under section 38(1) of the Act, the landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an application for dispute resolution claiming against the deposit, or return the deposit plus interest to the tenant.

In order for a landlord to file an application for dispute resolution to request retention of all or part of a security deposit the landlord must be able to serve the tenant. In order to repay a security deposit and pet deposit, section 38(8) of the Act requires that the landlord either give the refund to the tenant personally or serve it to the tenant using one of the following methods permissible under section 88:

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

As the tenant did not provide a postal code in the forwarding address and the tenant stated that he had to check two post offices in Kelowna as he was uncertain which one the mail would be delivered to, I am highly skeptical that the post office would or could

deliver mail addressed to the tenant using the address provided by the tenants in the note left in the rental unit. I have also considered that the tenant did not acknowledge receiving the landlord's Statement of Account that was allegedly sent to the tenants at the forwarding address provided in the note and find it to be further indication that the address provided in the note was not valid, complete or serviceable. Therefore, I prefer the position of the landlord that the forwarding address was not valid and was not serviceable.

The tenants' address appears on the tenants' application for dispute resolution. The address is complete and appears to be valid and serviceable. Therefore, I consider the address appearing on the tenant's application for dispute resolution to be a valid forwarding address which the landlord may use to refund the security deposit or use to serve the tenant with a landlord's application for dispute resolution. As the tenant did not provide evidence of service of the application upon the landlord for the hearing, such as a receipt or tracking number, I do not know when the application was received by the landlord. The Notice of Hearing was generated on October 14, 2008; however, the applicant has 3 days to serve the other party with the Notice of Hearing and Application for Dispute Resolution and since registered mail was used for service it is possible the landlord received the tenants' application many days after October 14, 2008. Without knowing when the tenants' application was received by the landlord I cannot conclude that the landlord has had the tenants' valid forwarding address for more than 15 days as of today's date.

Since the tenant has not provided sufficient evidence of when a valid forwarding address has been provided to the landlord, I do not find that the tenants have met their burden to prove the landlord failed to comply with section 38(1) of the Act and that the tenants are entitled to double their security deposit as of today's date.

I dismiss the tenants' application with leave to reapply. The tenants may make a subsequent application in order to prove when the landlord was served with the tenants' address that appears on the tenants' application for dispute resolution.

The landlord is at liberty to file an application to retain the tenants' security deposit and a claim for damages or loss if the landlord wishes to pursue that matter.

Conclusion

The tenants' application is dismissed with leave to reapply.

November 4, 2008

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Date of Decision