

# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** MNSD FF

## **Introduction**

This hearing dealt with an application by the tenant for a monetary order for the amount of the security deposit and compensation under section 38 of the Residential Tenancy Act. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord attended today's hearing.

## **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

## **Background and Evidence**

The undisputed facts before me, under solemn affirmation by both parties, are as follows.

The tenancy began on January 01, 2006 and ended on September 01, 2008. The landlord collected a security deposit of \$300 at the outset of the tenancy. It is the landlord's evidence that on September 12, 2008, the landlord came into possession of the tenant's forwarding address, which the landlord has used, on three (3) occasions, to communicate with the tenant by mail.

The tenant's testimony is that on September 1, 2008, the tenant provided their upstairs resident at the dispute address with their forwarding address written on a "post it note". It is the tenant's testimony that by doing so they were confident and were assured by the upstairs tenant that the forwarding address in writing would be forwarded and thus received by the landlord. It is the testimony of both parties that the upstairs tenant is a

member of the landlord's family: the landlord's mother in law. The landlord's own testimony is that she is also a, "25% owner of the (applicant) tenant's rental unit", but is none the less "strictly a tenant" of the building. The tenant added testimony that on this landlord's purchase of the building in May 2006, it was communicated to them by this landlord that the upstairs tenant and landlord's family member could act as the landlord's conduit for any issues, enquiries, receipt of rent cheques and all other matters. The tenant testified she was affiliated to the named landlord and a trusted source. In particular, it is provided by the landlord and tenant, that on vacating the rental unit on September 01, 2008, the applicant tenant looked to the upstairs tenant to come to their rental unit and inspect it on behalf of the landlord, at which time they also left their forwarding address. The tenant testified that, "all transactions went through the upstairs tenant", and at least was led to believe that dealing with this landlord's family member was dealing with the landlord. The tenant's belief is that the landlord received the tenant's forwarding address on September 01, 2008, and that it was in writing. At no other time, via any means, did the tenant lend to resolve this issue, by again or additionally forwarding to the landlord an additional written confirmation of a forwarding address.

The landlord's testimony is that the tenant's forwarding address was delivered verbally. The landlord stated that on September 01, 2008 the tenant, "orally provided the upstairs tenant with a forwarding address for sending mail, and for damage deposit refund". And, on September 12<sup>th</sup>, "I obtained the mailing address from the upstairs tenant". The landlord goes on to describe using the forwarding mailing address in Ontario to mail the tenant a letter on September 13, 2008 advising the tenants of his results of an inspection at the dispute address and outlining costs associated with the assessed remedies. Then again on September 19, 2008, the landlord mailed the tenants a letter advising the tenant of a second opportunity for participation of an inspection of the dispute address in British Columbia at a specified time on September 27, 2008, which the tenant did not attend, nor were they represented.

### **Analysis**

By testimony of both parties and by the evidence material provided by the Landlord I find the tenant's right to the return of the security deposit has not been extinguished. The landlord's offer of the second inspection: 27 days after the tenant vacated the rental unit, now occupied by new tenants, and now repaired to the

landlord's satisfaction, was not realistic, nor would it have been reasonable if it had taken place.

I find the landlord's own testimony and evidence of his actions lend me to conclude that the landlord came to receive the tenant's forwarding address, likely written, and used it with confidence to forward mail.

I prefer the tenant's evidence that on September 01, 2008, the tenant left a forwarding address, in writing, with the tenant upstairs, for the landlord. By the landlord's own testimony, I find this forwarding address consequently was received by the named landlord. I find the upstairs tenant, also a 25% shareholder in the ownership entity of the dispute address, is also the landlord, as per the definition of landlord in **Section 1** of the Residential Tenancy Act, reads as follows,

**Section 1** In this Act:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

On reflection of all the evidence provided by the landlord, it appears that the landlord placed considerable effort in trying to meet many requirements, except the requirement of dealing with the security deposit directly in either of the two (2) methods prescribed by legislation.

**Section 38(1)** of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of **\$300** and was obligated under section 38 to return this amount together with the **\$9.09** in interest which had accrued. The amount which is doubled is the \$300 base amount of the deposit before interest.

**Conclusion**

I find that the tenant has established a claim for **\$609.09**. The tenant is also entitled to recovery of the **\$50** filing fee.

I grant the tenant an order under section 67 for the sum of **\$659.09**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 23, 2009