



# 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 the tenant's application for return of double the security deposit and recovery of the filing fee. The landlords did not appear at the hearing. The tenant testified that she served each of the named landlords with the Notice of Dispute Resolution Hearing and Application for Dispute Resolution by registered mail. The tenant provided registered mail receipts and tracking numbers as evidence of service upon the landlords. I was satisfied that the tenant served the respondents in accordance with the requirements of the Act and I proceeded with the hearing without the landlords present.

### Issues:

1. Has the tenant established an entitlement to return of double the security deposit?
2. Award of the filing fee.

### Background

Upon hearing undisputed testimony of the tenant, I make the following findings. The tenancy commenced in the spring of 1997 and ended on July 1, 2008. The rental unit was the upper level of a residential property. At the commencement of the tenancy, the tenant paid the former landlords a security deposit of \$450.00. After the former landlords sold the residential property the tenant paid her rent to the landlord that moved in to the lower unit in the residential property. On May 1, 2008 the tenant was

served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice). The Notice was signed by the other named landlord to this dispute. On July 22, 2008 the tenant sent the landlord residing in the lower unit a registered letter requesting return of the security deposit and provided a forwarding address in the letter. The landlord that signed the Notice responded to the tenants request for the security deposit by way of a letter dated August 1, 2008. The landlord refused to return the security deposit because the landlord alleged that a security deposit was not paid by the tenant and because of allegations that additional cleaning and repairs were required.

The tenant testified that she contacted the former owners of the property who provided her with a copy of their "Vendor's Statement of Adjustments". The Statement of Adjustments shows that a \$450.00 security deposit and accrued interest of \$41.89 was transferred to the purchaser of the property in 2005. The purchaser identified on the Statement of Adjustments is a person that the tenant believes to be a relative of the landlord. The landlord's letter of August 1, 2008 indicates that the landlord is now the owner of the house and that she purchased it from her daughter.

The tenant submitted that the landlord had stated that a security deposit was not paid to the former owners because the tenant was friends with the former owners. The tenant testified that at the commencement of her tenancy she did not know the former owners and that a friendship grew after the tenancy commenced. The tenant was adamant that she had paid a \$450.00 security deposit and is seeking return of double the security deposit with this application.

### Findings and Analysis

The Act defines "landlord" to include any of the following persons: the owner of the rental unit, the owner's agent or another person who acts on behalf of the landlord who permits occupation of the rental unit or exercises powers and performs duties under the Act or tenancy agreement. Based on the evidence provided to me, I am satisfied that

both parties named as the landlord in the tenant's application meet the definition of the landlord. Accordingly, my decision applies to both named respondents.

Upon consideration of the evidence before me, I am satisfied that the tenant paid a \$450.00 security deposit at the commencement of her tenancy. Section 93 of the Act provides that the obligations of the landlord with respect to a security deposit run with the land. Therefore, I find that the landlords named in this application are obligated to comply with the requirements of the Act with respect to returning the security deposit despite the fact the tenant paid the security deposit to the former owners.

Section 38(1) of the Act requires that a landlord either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Section 38(1) also requires that a landlord pay the tenant interest on the security deposit calculated in accordance with the regulations. A landlord may retain all or part of security deposit in limited circumstances as provided by the Act; however, I do not find that the landlords had the legal right to retain the tenant's security deposit.

I find that the tenant has sufficiently satisfied me that the landlord received the tenant's forwarding address no later than August 1, 2008 and that the landlord did not return the security deposit or apply to retain it within 15 days of receiving the forwarding address. Since the landlord did not comply with the requirements of section 38(1) of the Act the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act.

Since the tenant was successful with this application, I also award the tenant the filing fee paid for making this application. In light of the above findings, I hereby order the

landlord to pay the tenant double the security deposit, plus interest on the original deposit and the filing fee, calculated as follows:

Double security deposit (\$450.00 x 2 )	\$ 900.00
Interest (from April 1, 1997 to today's date)	59.04
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u>\$ 1,009.04</u>

The tenant has been provided with a Monetary Order with the tenant's copy of this decision. The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

#### Conclusion

The tenant was successful in this application and the landlord must pay the tenant \$1,009.04. The tenant has been provided with a Monetary Order in the amount of \$1,009.04 to enforce payment.

April 2, 2009

\_\_\_\_\_  
Date of Decision

\_\_\_\_\_  
Dispute Resolution Officer