



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant's agent and two agents for the landlord.

The landlord's agent testified that she submitted evidence, in the form of a tenancy agreement, to the Residential Tenancy Branch during the week of September 19 – 23, 2011. There is no copy on the file. The agent also testified that this document was not served on the tenant. As such, I cannot consider the submission of any additional evidence at this time.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted a copy an "Application to Rent" confirming the tenant paid the landlord a \$850.00 security deposit prior to the start of a tenancy; a copy of a negotiated cheque for the security deposit made payable to the landlord; and a copy of a letter the tenant wrote to the landlord dated June 4, 2011 requesting the return of her security deposit.

The tenant asserts that on April 20, 2011 she completed an Application to Rent with the resident manager and provided the manager with a security deposit but that the landlord or agent did not sign a tenancy agreement. The tenant's agent testified that they did sign a tenancy agreement but that the landlord did not nor did the landlord provide the tenant with a copy of an agreement.

The tenant's agent testified that on April 21, 2011 the tenant called the resident manager and advised that she was no longer interested in renting the unit. The landlord's agent asserts the tenant called on April 22, 2011 (Good Friday).

The landlord's agent testified that tenant signed an Application for Rent on April 19, 2011 and that it was approved that same day and the agent contacted the tenant to advise that it was approved and the tenant and her agent returned to the residential property on April 20, 2011 to provide the security deposit and sign the tenancy agreement.

The landlord's agent testified they retained the deposit as the new tenants in the unit did not start paying rent until June 15, 2011 and the landlord had a legal contract with this tenant to pay the rent for ½ month.

### Analysis

A tenancy agreement is defined in the *Act* as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit.

The wording of the Application to Rent submitted is: "I hereby offer to rent.....this offer is subject to acceptance by the landlord....." I accept the testimony of both parties that the tenant signed a tenancy agreement and that the landlord had not yet signed the written tenancy agreement.

I accept that as a practice the landlord requires potential tenants to file an Application to Rent and if accepted the landlord will then prepare a tenancy agreement. I find the fact that the landlord prepared a tenancy agreement that the tenant signed provides sufficient evidence that the landlord accepted the Applicant as their tenant and that by signing the tenancy agreement the tenant accepted the terms of that offer from the landlord. As such, I find a tenancy existed.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 allows a tenant to end a tenancy by giving the landlord notice to end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable. As such the earliest the tenancy could end would have been May 31, 2011.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the tenant provided the landlord with her forwarding address in writing personally on June 6, 2011. Based on this, the latest the landlord must have either

returned the security deposit or filed an Application for Dispute Resolution would have been June 21, 2011.

Based on the landlord's agent's testimony, I accept the landlord did not return the security deposit or file an Application for Dispute Resolution and I therefore find the landlord failed to comply with Section 38(1).

### Conclusion

For the reasons noted above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,700.00** comprised of \$1,650.00 double the amount of the security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 28, 2011.

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Residential Tenancy Branch