



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Preliminary Issues

After reviewing the Tenant's application for dispute resolution, at the outset of the hearing, the Tenant requested to amend her application to add the name of the person to whom her rent payments were made payable to. The Tenant indicated that she was initially told the property was jointly owned by the two sisters which is why she was dealing with one sister and making rent payments to the other sister. She was not certain whose name to put on the application and after a brief discussion she requested an amendment to include both names.

The Tenant confirmed the method of service of the hearing documents and provided evidence to support that the registered mail delivery was unclaimed and therefore requested that it be considered served in accordance with the Act.

Based on the aforementioned I approve the Tenant's request to amend the application to include both the person she dealt with and the person who the payments were made payable to pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

After considering the circumstances before me, I further find that each Landlord has been sufficiently served Notice of today's hearing, as of August 15, 2011, five days after the registered mail was sent, pursuant to section 71(2)(b) of the *Residential Tenancy Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to return all or part of the security deposit, and to recover the cost of the filing fee from the Landlords for this application.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Did the parties enter into a verbal tenancy agreement?
2. If so, have the Landlord's breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, has the Tenant met the burden of proof to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed that she responded to an internet advertisement and verbally agreed to rent the basement suite beginning February 15, 2011. She viewed the suite with Landlord (1) on February 12, 2011 when they agreed that rent would be payable on the first of each month in the amount of \$825.00. She issued two cheques made payable to Landlord (2) one dated February 12, 2011 for \$862.50 which paid the \$450.00 security deposit and \$412.50 as rent for February 15 – 28, 2011; and the second cheque dated March 1, 2011 for March 2011 rent of \$825.00.

The Tenant advised that her previous tenancy was not expiring until March 31, 2011 so she had planned to move into this new rental unit during the month of March 2011. She had agreed to pay rent starting February 15, 2011 so she would not lose out on the opportunity to secure this unit. She was provided the keys to the rental unit sometime around the twelfth of February, 2011. She had attended the rental unit a few times up to early March 2011, and moved her couch into the unit around the second week of March. Then on March 19, 2011 she received a text message from Landlord (1) advising her that her tenancy would be ending April 30, 2011. She attempted to speak to Landlord (1) on several occasions about this and was never able to reach her. She was never given a written notice to end her tenancy.

The Tenant stated that when she arrived at the rental unit on March 29, 2011 with her possessions to move into the unit the locks had been changed and she could not gain access. When she went to the front of the house she saw there were two real estate signs listing the house for sale. She called one of the realtors and was advised to contact the owner, which was Landlord (1)'s estranged spouse. She was informed by Landlord (1)'s spouse that he had no idea his spouse had rented out the suite and that the house was being sold by court order and she could not move in. The owner advised her of Landlord (1)'s new address. She does not know the exact date the locks were changed.

The Tenant confirmed she provided the Landlords with her forwarding address on her application for dispute resolution. Landlord (1) refuses to answer her calls or text messages. She is seeking to be reimbursed February and March 2011 rent, and the return of her security deposit.

### Analysis

In the absence of any evidence from the Landlords, who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 1 of the Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

After careful consideration of the evidence before me I find the parties, as named as applicant and respondents to this decision were parties to a tenancy agreement as defined by the Act.

Section 49(5) of the Act provides a landlord the opportunity to end a tenancy for landlord's use of the property if (a) the landlord enters into an agreement in good faith to sell the rental unit, and (b) all the conditions on which the sale depends have been satisfied, and (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds: (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit; (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. I note that there is no provision in the Act that provides a landlord the authority to end a tenancy because a court ordered the house to be sold.

Although the Tenant did not occupy the rental unit prior to March 29, 2011 there is insufficient evidence to prove she was prevented access prior to March 29, 2011. Rather, the evidence supports she had unrestricted access to the rental unit prior to this date and chose not to occupy the unit until March 29, 2011.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord.

Therefore, based on the evidence before me, I find the Landlords ended the Tenant's tenancy, in breach of the *Residential Tenancy Act*, as of March 29, 2011 and I award the Tenant aggravated damages, pursuant to sections 62 and 67 of the *Residential Tenancy Act*, in the amount of **\$906.40** which is comprised of three days rent for March 29, 30, and 31, 2011 plus damages equal to one month's rent.

The evidence supports the tenancy ended March 29, 2011 and that the Tenant provided her forwarding address in her application for dispute resolution that is deemed to have been received by the Landlords on August 15, 2011, five days after it was mailed.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than August 30, 2011. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Accordingly, I find that the Tenant has succeeded in meeting the burden of proof and I award her double her security deposit plus interest of \$0.00 for the amount of **\$900.00**, pursuant to section 67 of the *Residential Tenancy Act*.

I find that the Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$1,856.40** (\$906.40 + \$900.00 + \$50.00). This Order is legally binding and must be served upon the respondent Landlords.

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: November 14, 2011.

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Residential Tenancy Branch