



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for return of the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary Issue

The landlord submitted that the Act did not apply to this matter because the landlord/owner moved into the rental unit July 1, 2011 and would have shared a kitchen and bathroom with the tenant. In this decision I have recorded the landlord's testimony with respect to this issue and considered whether the Act applies to this dispute.

### Issue(s) to be Decided

1. Does the Act apply to this tenancy and do I have jurisdiction to resolve this dispute?
2. If jurisdiction is found, is the tenant entitled to return of his security deposit, and if so, what is the amount owed to the tenant?

### Background and Evidence

The rental unit is a bedroom in a three bedroom condominium with shared kitchen and bathroom facilities. Upon responding to an advertisement on Craigslist the tenant viewed the property and observed two other bedrooms were occupied by other tenants. On June 8, 2011 the tenant paid the landlord \$375.00 for a security deposit. The landlord did not prepare a written tenancy agreement; however, at the time of giving the deposit the parties had agreed that the tenancy was to commence July 1, 2011 and the monthly rent was \$750.00 on a month-to-month basis. The tenant also paid \$375.00 towards rent which was later returned to the tenant.

On June 22, 2011 the tenant advised the landlord he was prepared to rent the room for only one month. The landlord responded by telling the tenant that she would require rent of \$900.00 if he would only rent the unit for one month. The tenant did not agree to pay \$900.00 and was not provided possession of the unit. The landlord explained that she required higher rent for a one-month rental because she wanted a tenancy for a minimum of four months.

On July 4, 2011 the tenant sent the landlord a registered letter requesting return of his security deposit and provided the landlord with his mailing address. The landlord responded, in writing, advising the tenant she would not return the deposit because he gave insufficient notice to end the tenancy.

The landlord submitted that she moved into the unit July 1, 2011 and the Act does not apply to this dispute. The landlord testified that she never told the tenant that she was going to move in to the condominium and would be sharing a kitchen and bathroom with him. The landlord testified that in the last week of June 2011 she decided to move in to the condominium starting July 1, 2011. The landlord explained that she co-owns another condominium and that she had been residing in that other condominium when she was dealing with the tenant; however, in the last week of June 2011 the co-owner of that unit advised the landlord that she needed to move out of that unit by July 1, 2011. The landlord acknowledged she had no documentary evidence to support such a move but that the co-owner of the other unit could testify to confirm this information. I determined it unnecessary to hear from the landlord's witness for reasons explained in the analysis.

### Analysis

The Act applies to tenancy agreements between landlords and tenants unless the tenancy is expressly excluded from the Act. "Tenancy agreement" is defined in the Act to mean written, oral, express or implied agreements involving possession of a rental unit by a tenant. Section 4 of the Act provides for tenancies that do not fall under the jurisdiction of the Act. Excluded from the provisions of the Act are tenancies involving "living accommodation in which the tenant shares kitchen or bathroom facilities with the owner of that accommodation."

I found the landlord's submission that she moved into the living accommodation with only a week's notice from the co-owner of another property to be highly unlikely. However, in the event the landlord did move into the living unit on July 1, 2011 as she stated, I find the Act still applies to the agreement between the landlord and tenant

since the agreement started and ended before the landlord's occupation of the living accommodation commenced. I provide the following reasons for this finding.

Section 16 of the Act provides that "the rights and obligations of a landlord and 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." The Act also provides that a landlord must not take a security deposit at any time other than when a tenancy is entered into. Thus, I find that a tenancy agreement was entered into and the parties were bound by the agreement starting June 8, 2011.

As explained to the landlord during the hearing, parties either enter into a periodic (ie: month-to-month) tenancy or a fixed term tenancy when a tenancy agreement is entered into. I find insufficient evidence of a fixed term tenancy based upon the parties verbal testimony and because there was no written tenancy agreement. Therefore, the tenant was within his rights under the Act to end the tenancy with one month's notice as he advised the landlord he intended to do.

When the landlord required an additional \$150.00 in rent on June 22, 2011 I find the landlord violated a material term of the agreement and the requirements of the Act and I am satisfied that this violation caused the tenant to abandon the tenancy at that time, thus, bringing the tenancy agreement to an end.

In light of the above, I find the tenancy agreement commenced June 8, 2011 and ended June 22, 2011. Since the landlord alleged she moved into the living accommodation starting July 1, 2011 I find her alleged occupation of the living accommodation does not exclude the tenancy agreement from the provisions of the Act.

Since I have found jurisdiction to resolve this dispute under the Act, I proceed to consider the tenant's request for return of the security deposit.

Section 38(1) of the Act requires the landlord to 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. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

Since the tenant sent his forwarding address to the landlord in the mail on July 4, 2011, it is deemed to be received by the landlord five days later under section 90 of the Act, and the landlord had until July 24, 2011 to either return the security deposit or make an

Application for Dispute Resolution to avoid the application of section 38(6) of the Act. I find the landlord failed to meet the landlord's obligations under section 38(1) of the Act and must now pay the tenant double the security deposit.

The requirement to pay double is not discretionary and, as provided in Residential Tenancy Policy Guideline 17, double will be ordered unless the tenant waives entitlement to double. Since the tenant did not waive entitlement to double I award the tenant \$750.00 for double the security deposit plus \$50.00 for the filing fee he paid for this application.

Provided to the tenant with this decision is a Monetary Order in the total amount of \$800.00 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) an Order of that court.

### Conclusion

I have found the Act applies to this tenancy and I have jurisdiction to resolve this dispute. The tenant is awarded double the security deposit plus recovery of the filing fee. The tenant is provided a Monetary Order in the total amount of \$800.00 to serve upon the landlord.

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: December 07, 2011.

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Residential Tenancy Branch