



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Executrix of the Landlord's estate to keep all or part of the pet and security deposits.

Service of the hearing documents, by the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on February 10, 2012. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the Landlord's submissions I find the Tenants have been sufficiently served notice of this proceeding.

The Landlord appeared at the teleconference hearing and provided affirmed testimony. No one appeared on behalf of the Tenants despite them being served notice of this proceeding in accordance with the *Act*.

### Issue(s) to be Decided

1. Is the Applicant also a Landlord?
2. When did the tenancy end?
3. Is the Landlord's estate entitled to keep the deposits in accordance with the *Residential Tenancy Act* (the *Act*)?

### Background and Evidence

The Landlord affirmed that at the time the tenancy agreement was entered into she was legally married to the deceased who is named on the application for dispute resolution and the tenancy agreement as the Landlord and that she was co-owner in the manufactured home that was rental unit in question. The male Landlord, her spouse, passed away on October 22, 2011.

The Landlord advised that her and her spouse entered into an agreement to purchase the manufactured home approximately five years ago and that her spouse agreed to rent it to these two tenants. The Tenants were instructed to deposit their rent into a

bank account that was owned by the third party whom they were purchasing the trailer from to eliminate their payment towards the purchase of the manufactured home.

The Landlord argued that the tenancy agreement was signed January 5, 2011 and the parties agreed that a security deposit of \$300.00 and a pet deposit of \$300.00 were to be paid by February 1, 2011 which was the start date of the tenancy; however there is no proof that these deposits were ever paid. She said the Tenants asked for the return of the deposits stating they paid her spouse cash and that he did not have a receipt book so they did not get receipts.

The Landlord confirmed that no condition inspection report forms were completed at move in or at move out. The tenancy ended January 31, 2012 and the Tenants gave her their forwarding address in writing on February 1, 2012.

I asked the Landlord why she would make an application to keep deposits that were not paid and she advised that when she contacted the *Residential Tenancy Branch* she was instructed to make application to keep them to prove they were not paid.

### Analysis

Section 1 of the *Residential Tenancy Act* defines "**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;

Applying the above definition, I find that the applicant named as the Executrix to the estate of the Landlord is also a Landlord to this proceeding. There was ample evidence that Executrix exercised powers while performing duties under the Act which related to the tenancy in the rental property.

I accept the Landlord's evidence, in part, because the Tenants failed to provide evidence or attend the teleconference hearing despite them being served notice of this proceeding in accordance with the Act. Furthermore the Landlord readily acknowledged that they did not complete condition inspection report forms at move in or at move out.

In my view the Landlord's willingness to admit fault when she could easily have stated she did have these reports completed lends credibility to all of her evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

For all the aforementioned reasons, and in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord.

### Conclusion

I HEREBY FIND that the \$300.00 security deposit and the \$300.00 pet deposit that were listed on the tenancy agreed were never paid and therefore cannot be requested to be returned by the Tenants.

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: April 11, 2012.

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Residential Tenancy Branch