



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

Toward the end of the hearing, as the legislation relevant to return of a deposit was explained to the tenant, the tenant chose to exit the hearing without any warning. He did not dial back into the hearing.

### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The parties confirmed that the tenancy commenced on January 1, 2012; this was a co-tenancy with the applicant's girlfriend.

The tenant vacated the unit and requested his name be removed from the written tenancy agreement; the landlord refused to remove the tenant and indicated he continued to be responsible as a tenant under the agreement both co-tenants had signed.

The landlord testified that the co-tenant who remained in the unit vacated effective May 2, 2012, without notice and without paying rent. The landlord had possession of the unit on May 2, 2012.

The tenant stated he previously gave the landlord his forwarding address in writing and that his address remains as that indicated on his application.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The tenant has requested return of the deposit in advance of the end of the tenancy. There was no that the tenant had given his address in writing, to the landlord.

A landlord is not required to remove a co-tenant from a written agreement; that is at the discretion of the landlord. Therefore, from the testimony of the parties, it is apparent that the tenant has signed a tenancy agreement and continued to be responsible for the terms of that agreement until the tenancy ended.

Based on the evidence before me, that the landlord had vacant possession of the unit on May 2, 2012, I find that the tenancy ended on that date. The landlord stated she has accepted the tenant's forwarding address, as shown on his application, effective the hearing date. The landlord would then have fifteen days from May 4, 2012, to return the deposit to one of the co-tenants or submit a claim against the deposit.

Therefore, as the tenant has not shown that he gave the landlord a written forwarding address and, based on the testimony that the tenancy has ended several days prior to this hearing, I find that the tenant's application was premature and that it is dismissed.

### Conclusion

The tenant's application is dismissed.

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: May 07, 2012.

---

Residential Tenancy Branch