



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for a monetary order for recovery of the security deposit. The tenant's application claims double the amount of the security deposit, pursuant to Section 38 of the *Residential Tenancy Act*.

The tenant attended the conference call hearing with an advocate who also testified, and the tenant gave affirmed testimony. The advocate was not permitted to hear the tenant's testimony prior to testifying. The tenant also provided evidentiary material in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on July 6, 2012, no one for the landlord company or the named landlord attended the conference call hearing. The tenant's advocate provided a tracking number for the registered mail as well as advising that copies of the documents were also personally served to a manager within the landlord's place of business, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for double return of the security deposit?  
Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on July 1, 2010. Rent in the amount of \$450.00 per month was paid directly to the landlord by a government

ministry, and there are no rental arrears. The landlord also collected a security deposit in the amount of \$200.00 prior to the commencement of the tenancy.

The tenant further testified that the landlord caused a notice to be served on the tenant by sliding the notice under the door of the rental unit on January 21, 2012 which stated that all tenants are being evicted from the building due to safety concerns, and that all tenants had to be out of their respective rental units within 2 days, or by January 23, 2012. The tenant complied with that notice, and then on or about January 24, 2012 observed a notice posted on a wall of the Bread of Life, a local food bank and soup kitchen for low income people. That notice extended the date of required vacancy of all tenants in the building to January 31, 2012. Copies of both notices were provided for this hearing, and neither are in a form approved under the *Residential Tenancy Act*. The first notice is typewritten, and the second notice is handwritten.

The tenant also testified that an advocate assisted in requesting return of the security deposit and the tenant signed a letter which contained the advocate's address for the landlord to return the security deposit to. The tenant has not received any amount from the landlord.

The tenant's advocate testified that a request for return of the security deposit was sent to the landlord by facsimile on February 17, 2012, but the advocate did not receive any confirmation that the landlord had received it. The advocate sent the request again by facsimile on March 21, 2012 and received confirmation that it was received by the landlord. A copy of the request was provided in advance of this hearing, and it contains a forwarding address of the advocate and a request that the money be sent to that address. The tenant has also provided a copy of the verification that the facsimile was received by the landlord.

The advocate also testified to speaking with the owner of the rental building who told the advocate that the building fell under the *Hotel Act* and therefore the landlord did not have to comply with the *Residential Tenancy Act*. The advocate has not received any correspondence or money from the landlord.

The tenant was given the opportunity to provide a copy of a letter or other documentation from the landlord to confirm that the facsimile was sent to a facsimile number of the landlord, and the tenant provided by facsimile a copy of a letter sent to the tenant from the landlord on March 16, 2012 which is on letterhead of the landlord company and contains the facsimile number of the landlord, which is the same number

shown on the verification that the landlord received the tenant's request for return of the security deposit.

The tenant's advocate also testified that the landlord did not give any of the tenants in the building any notice, and the tenant claims 2 month's rent as compensation for the stress and moving expenses on the requirement to move from the rental unit on 2 day's notice.

### Analysis

Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. In the absence of any evidence to the contrary, I accept the testimony of the tenant, and I find that the tenancy ended on January 23, 2012, and that the tenant provided a forwarding address in writing on March 21, 2012. I further find that the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

In the circumstances, I find that the tenant has established a claim for the security deposit of \$200.00, and double the base amount of the security deposit for a total of \$400.00.

I further find that the landlord caused the tenant to move from the rental unit on January 23, 2012 having already paid rent for the month of January. Therefore, the landlord is obliged to return the unused portion of the rent to the tenant. In a month that has 31 days, I find that the daily rent is \$14.51 and the landlord is not entitled to keep rent for January 24 to 31 inclusive, and must repay the tenant \$116.13

With respect to the tenant's application for aggravated damages, the Act requires a landlord to provide a tenant with 2 month's notice to vacate the rental unit if the rental unit is going to be used for the landlord's purposes or sold or demolished. If the landlord fails to use the rental unit for the purposes set out in the notice to end tenancy for a minimum of 6 months, the tenant is entitled to recovery of 2 month's rent. In this case, the landlord did not provide the tenant with a notice to end tenancy in the approved form and did not provide the tenant with 2 month's notice to move. Therefore, I find that the tenant has made out a claim for the equivalent of 2 month's rent.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,416.13.

This order is final and binding on the parties and may be enforced.

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 17, 2012.

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Residential Tenancy Branch