



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RPP, MND, MNR, MNSD, FF

### Introduction

This dispute was originally heard by me on September 6, 2012 and a decision was issued on September 7, 2012. The landlord filed an application for review of the decision and in a decision dated October 3, 2012, a Dispute Resolution Officer ordered that the hearing be reconvened to deal with the single issue of when the landlord had received the tenant's forwarding address.

The reconvened hearing took place on this date with both parties in attendance. The landlord submitted evidence to support issues which were addressed in the September 7 decision but which were not at issue in the limited scope of this hearing. At the hearing I advised the landlord that I would not consider evidence on issues not before me and advised her that if she believed the September 7 decision to be incorrect, she could apply to the Supreme Court for judicial review.

At the hearing the landlord brought to my attention a single issue which had been part of the original claim and had been referenced in the background and facts of the September 7 decision, but which I had failed to address in my analysis. Although the landlord did not make an application for correction, section 78(1.1) of the Act permits me to correct a decision on my own initiative and I find it appropriate to address this oversight in this decision.

I note that the landlord also asked that she be awarded the \$25.00 filing fee paid to file her application for review. Section 72(1) of the Act permits me to order repayment of this fee by a party, but does not permit me to order repayment by the director. As this decision will show, the original decision with respect to the date the landlord received the tenant's forwarding address was made by my own error rather than on any fraud or misrepresentation by the tenant. As the tenant did not cause the error, I cannot order him to repay the filing fee for the review application and as there is no provision under the Act whereby I can order the director to repay the filing fee, I find that the fee is not recoverable.

### Issues to be Decided

Is the tenant entitled to an award of double his security deposit?

Is the landlord entitled to an award for telephone charges?

### Background and Evidence

The parties agreed that the tenant paid a \$180.00 security deposit at the outset of the tenancy. The tenant testified that he gave the landlord his forwarding address via registered mail sent on August 10, 2012. The landlord testified that she did not receive the registered letter until August 17. The landlord filed her application for dispute resolution on August 27.

The parties agreed that the tenant was responsible for paying for any charges associated with his telephone calls and further agreed that the tenant had paid \$55.16 toward the March telephone charges. The landlord provided copies of the telephone invoices for the months of March, April and May. The invoices show that the only charges levied were for calls to Nepal and the Ukraine. The tenant acknowledged that he made the calls in question. The March invoice totaled \$67.46, the April invoice totaled \$36.88 and the May invoice totaled \$5.47.

### Analysis

I accept the landlord's testimony that she did not receive the registered letter containing the tenant's forwarding address until August 17. The landlord had 15 days in which to file her claim against the security deposit in order to escape liability for double the deposit and she in fact filed her claim just 10 days after having received the forwarding address. I find that the landlord is not liable for double the security deposit and I find that the tenant should be credited with \$180.00, which is the amount of the original security deposit.

The telephone invoices total \$109.81. As the tenant has acknowledged responsibility for the charges to Nepal and the Ukraine, I find that he is responsible for paying the telephone invoices. After crediting the \$55.16 payment, I find that the tenant owes the landlord \$54.65 and I award the landlord that sum.

### Conclusion

Ms. Wood's October 3 decision granting this hearing suspended the original decision and orders. The original decision is confirmed save and except for those issues which are changed by this decision, namely the \$54.65 award to the landlord for telephone

charges and the \$180.00 reduction of the award to the tenant given the new finding that the landlord complied with the statutorily imposed timeframe to claim against the security deposit. The order dated September 7, 2012 is set aside and of no force or effect and is replaced by the order accompanying this decision.

In the September 7 decision, the landlord was awarded a total of \$359.60 and the tenant awarded a total of \$617.55, representing \$257.55 in damages and \$360.00 as double his security deposit. I confirm the landlord's \$359.60 award and add to that amount the \$54.65 to which I have found she is entitled for telephone charges for a total award of \$414.25. I confirm the tenant's award of \$257.55 in damages. I set aside the award to the tenant for \$360.00 for the security deposit and I replace that award with a credit to the tenant for \$180.00, which is the amount of the original security deposit, bringing the total of the tenant's award to \$437.55.

The landlord has been awarded a total of \$414.25 and the tenant a total of \$437.55. Setting off these awards as against each other leaves a balance of \$23.30 payable by the landlord to the tenant.

I grant the tenant a monetary order under section 67 for \$23.30. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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, 2012

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Residential Tenancy Branch