



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and for the return of her security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the Tenant be awarded a Monetary Order?

### Background and Evidence

The Tenant submitted documents into evidence which included, among other things, copies of: a July 28, 2012 letter issued to the Landlord from the Tenant; an August 19, 2012 letter issued to the *Residential Tenancy Branch* from the Tenant, and e-mails between the Tenant and Landlord between April 3, 2012 and July 31, 2012.

The parties agreed that they initially entered into a written month to month tenancy that began on May 1, 2011. Rent was payable on the first of each month in the amount of \$515.00 and in approximately mid April 2011 the Tenant paid \$257.50 as the security deposit. No move in or move out condition inspection report forms were completed.

The Tenant advised that she moved out of the rental unit at the end of July 2011 and sublet it from the beginning of August 1, 2011. Shortly afterwards the municipality conducted an inspection and issued orders that the stove had to be removed and that no one could occupy the illegal suite until safety measures were rectified. As a result

the sublet tenants vacated the property as of the end of September, 2011 and the original tenancy was ended.

The Landlord confirmed that the municipality issued orders and the sublet tenants vacated the property at the end of September 2011.

The Tenant stated that she stayed in contact with the Landlord and that he told her he would bring the rental suite up to standards so she could reoccupy the unit upon her return to the city. She said she entered into a verbal tenancy upon her return which began on February 1, 2012.

The Tenant advised that near the end of February or the beginning of March 2012 she informed the Landlord that she would be leaving the country at the end of April 2012. At that time they entered into a verbal agreement that the Landlord could continue to utilize her security deposit until her return to Canada and in exchange the Landlord would store her furniture and they would finalize the disbursement of the security deposit and tenancy contract upon her return. On April 29, 2012 she cleaned the rental unit and placed the key in an envelope and put it in the Landlord's mailbox.

When she realized her return would be delayed she e-mailed the Landlord on June 30, 2012 and attempted to make arrangements for the return of her deposit. Then on July 28, 2012 she provided the Landlord written notice of her Agent's address and requested her deposit be sent to him. The Agent affirmed that he personally left the letter in the Landlord's mailbox on July 28, 2012.

The Landlord argued that the Tenant did not end her tenancy until she sent the e-mail of June 30, 2012. He confirmed receiving the July 28, 2012 letter with instructions to return the deposit to the Tenant's Agent's address.

The Landlord confirmed that he has not returned the security deposit, he has not made application to keep the deposit, and he does not have the Tenant's permission to keep the deposit, and he does not have an Order authorizing him to keep the deposit.

### Analysis

Section 45(1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable.

In this case the evidence supports the Landlord received the Tenant's June 30, 2012 e-mail advising him that he should advertise the unit to rent it to other tenants. Accordingly, I find that on June 30, 2012 the Tenant provided notice to end her tenancy which would be effective **July 31, 2012** pursuant with Section 45 of the *Act*.

The evidence further supports that the Tenant provided the Landlord with her forwarding address, by means of providing the Landlord her Agent's name and address, on **July 28, 2012**.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than August 15, 2012. He did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Accordingly, I find that the Tenant has succeeded in proving her claim for the return of double her security deposit plus interest in the amount of **\$515.00** (2 x \$257.50 + \$0.00 interest).

The Tenant has succeeded with her application; therefore, I award recovery of the **\$50.00** filing fee.

#### Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$565.00** (\$515.00 + \$50.00).

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 06, 2012.

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Residential Tenancy Branch