



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was an application by the tenant for a monetary order for the return of the security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant's agent and the landlord participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit including double the amount?

### Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on March 1, 2010 for a one year fixed term. The tenancy agreement was made between the landlord and Ms. M.W. who was the girlfriend of the applicant. Monthly rent was \$2,150.00 payable on the first day of each month. M.W. paid a security deposit of \$1,075.00 on February 26, 2010. During the first year of the tenancy the applicant lived in the rental unit with M.W.

The tenant M.W. moved out of the rental unit approximately one year after the tenancy began. The tenant's agent said that the tenant continued to live in the unit and pay rent to the landlord and later he shared the unit with his brother. The tenancy ended in August, 2012. The tenant's agent said that M.W. now lives in Australia. The tenant submitted a letter from M.W. dated December 24, 2012 wherein she said that when she and the applicant moved into the rental unit they paid a deposit of \$1,175.00. She said that she had several conversations with the landlord where he assured her that there was no problem if she moved out the tenant stayed in the rental unit. She said the landlord never provided paperwork to change the name on the lease. She said in the letter: "Please take this letter as my consent to release the damage deposit in its entirety to (name of applicant)".

The landlord said that the M.W. the original tenant had forfeited the deposit because she broke the fixed term tenancy agreement by moving out early. He also suggested, that the letter from M.W. may not be genuine, based on her signature. He said that he thought the signature was different from the signatures of M.W. as they appeared on the landlord's tenancy agreement. He also said that he incurred charges from the strata corporation related to the tenants, but he provided no documentary evidence to substantiate his testimony. The landlord confirmed that rent was paid each month during and after Ms. M.W.'s tenancy. He confirmed that he never told her, orally or in writing that her security deposit would be forfeited because she moved out before the end of the tenancy and he acknowledged that there was no provision in the tenancy agreement that would entitle him to retain the security deposit because she moved out before the end of the term.

I learned during this hearing that there was a previous hearing concerning the security deposit. As recorded in the previous decision dated December 3, 2012, the arbitrator received the following testimony:

M.B. testified that K.W. provided the landlord with his forwarding address by delivering it to him on August 15, 2012 and that to date the landlord has not returned any of it and that K.W. had not consented to the landlord retaining any portion of it. The landlord admitted receiving the notice of the forwarding address but claimed that the K.W. was not a tenant. He testified that the original tenancy was with M.W. although he knew that P.W. was living with her. He agreed to have a new tenancy with P.W. when M.W. left, however he insisted that K.W. was not a tenant and that P.W. paid the rent, although he admitted he may have accepted rent from K.W. on occasion. The landlord testified that to date M.W. and P.W. had not provided their forwarding addresses and P.W. or K.W. had not provided him with any authorization from M.W. transferring the security deposit from M.W. to them. He insisted that a new tenancy agreement was created with P.W. without a security deposit and also that there was damage to the suite which P.W. had agreed to take responsibility for.

The arbitrator found that:

I find that the original tenancy agreement with M.W. ended when M.W. moved out and a new one commenced with P.W. or P.W. and K.W. thereafter. In this instance it is the applicant who has the burden of proof to establish entitlement to the security deposit. Without any evidence from M.W. assigning her interest in the security deposit, or an it is difficult to determine who is or if K.W. is entitled to recover it. Accordingly I must dismiss this application as the applicant has failed to establish on the balance of probabilities that he is entitled to recover the security deposit. Because of the complexity of the history of this tenancy I grant the applicant leave to reapply. He may wish to consider joining other parties.  
(above passages reproduced as written)

In the previous proceeding the applicant was K.W. the brother of the applicant in this proceeding.

### Analysis

I accept the previous arbitrator's finding that M.W.'s tenancy ended when she moved out and a new tenancy with the applicant commenced thereafter.

I have looked at the signatures of M.W. as they appear on the landlord's tenancy agreement documents and compared them with the signature on the December 24, 2012 letter produced in support of this application; I consider that the signature closely resembles the earlier signatures and, apart from the landlord's speculation about the signature, I have no reason to doubt its authenticity. I find that the former tenant M.W. has assigned her interest in the security deposit to the applicant in this proceeding and that the security deposit was retained by the landlord as a security deposit on the tenancy with the applicant which was upon the same terms as the previous tenancy.

When the tenancy ended in August, 2012 the landlord was given the tenants' forwarding address for the purpose of returning the deposit, however, it was not until this application was made that the tenant provided proof that the security deposit was assigned to him. For this reason I find that the provisions of section 38 of the *Residential Tenancy Act* providing that a landlord must return a deposit or make a claim against it within 15 days of the end of tenancy do not apply in this case, due to the confusion over entitlement to the deposit, only now resolved by the letter from the former tenant. The doubling provision of section 38 (6) therefore does not apply. I find

that the amount of the deposit was inadvertently misstated in M.W's letter and the correct deposit amount is set out in the tenancy agreement. I grant the tenant's application and award him the original deposit amount of \$1,075.00. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,125.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims 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: April 19, 2013

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Residential Tenancy Branch