



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RENT IT FURNISHED REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNSD, RR, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for the return of double the security and pet deposits, compensation, return of rent and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be Decided**

Is the tenant entitled to the return of double the security and pet deposits? Is the tenant entitled to compensation, return of rent and to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on April 01, 2012 for a fixed term of six months. The tenant moved out at the end of the fixed term, on September 30, 2012. Prior to moving in, the tenant paid a security deposit of \$1,847.50.00 and a pet deposit of \$1,847.50.

The tenant stated that the unit was advertised as furnished for a monthly rent of \$3,695.00 and unfurnished for \$2,895.00. On February 21, 2012, the parties entered into an agreement for the tenant to rent the furnished unit. Shortly after the tenant found out that a cat had been living in the unit. The tenant stated that she and her husband are allergic to cat fur and therefore prior to moving in, they asked the landlord to provide them with an unfurnished suite. The landlord agreed to do so but informed the tenants that the rent would still be \$3,695.00. The tenants agreed to pay this amount and moved into the rental unit.

The tenant stated that at the start of the tenancy there were several problems with the rental unit. It was not cleaned properly, the cable and surround sound systems were not working. The tenant stated that she informed the landlord and he made some efforts to resolve the issues.

The landlord agreed that he received the tenant's forwarding address in early October and failed to return the security and pet deposits within the legislated 15 day time frame.

The tenant has applied for the return of double the deposits minus the amount received already. The tenant is also applying for \$5,010 for loss of quiet enjoyment and the differential in rents for a furnished and unfurnished rental unit.

### **Analysis**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord was notified of the tenant's forwarding address in early October 2012 and returned the deposits in the middle of December 2012. Accordingly, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security and pet deposits. The landlord has already returned the base amount and is obligated under section 38 to return an additional \$3,695.00 to the tenant.

The tenant has applied for the return of the difference in rent for furnished and unfurnished units. The tenant acknowledged that she had asked the landlord to reduce the rent prior to moving in and he did not do so. I find that the tenant had the choice not to move in if she did not agree to the amount of the monthly rent. By moving in and paying full rent, the tenant was in agreement with the amount of the rent. Accordingly, I find that the tenant is not entitled to the rent differential she is claiming.

The tenant has also applied for compensation for the loss of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy or there has been inaction on the part of the landlord which allows physical interference by an outside or external force which is within the landlord's power to control.

Based on the testimony of the tenant, I find that the problems that she encountered in the beginning of the tenancy did not render the unit unfit for occupancy. The tenant had the option of taking action to resolve these issues by applying for dispute resolution in the event the landlord did not respond to her complaints. The tenant stated that the landlord did send a cleaner but the service was not adequate.

I find that the tenant did not provide sufficient evidence to support her claim for compensation for the loss of quiet enjoyment and therefore I dismiss this claim.

Overall the tenant has established a claim of \$3,690.00. Since the tenant has established a portion of her claim. I award her \$50.00 towards the filing fee.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$3,740.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order for \$3,740.00.

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: July 12, 2013

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Residential Tenancy Branch

