



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the tenant entitled to their security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenant testified that the tenancy began as a fixed term tenancy on October 1, 2012 and was to expire on September 30, 2013. The rent was \$1,200.00 and a security deposit of \$600.00 was paid. The tenant testified that they terminated the tenancy by moving out on June 30, 2013 and the written forwarding address was provided to the landlord by email and by registered mail sent on July 17, 2013. The tenant provided the Canada Post tracking number to confirm the registered mail and a copy of the July 17, 2013 letter they had sent to the landlord with the forwarding address.

The tenant testified that the landlord failed to return the security deposit and on July 22, 2013, the tenant made an application for dispute resolution.

The landlord testified that, because the fixed term was not supposed to expire until September 30, 2013, he believed that the 15-day deadline countdown, to return the tenant's security deposit, did not start until after the contractual end date of the tenancy.

The landlord testified that the tenant also owes compensation for vacating the unit and not paying rent for the remainder of the contract. The landlord feels that he was entitled to keep the tenant's security deposit under these circumstances.

### **Analysis**

In regard to the return of security and pet damage deposits, I find section 38 of the Act is clear. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the written forwarding address, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord failed to refund the deposit within the 15 days.

The Act states that the landlord can only retain a deposit, without obtaining an order, if the tenant agrees in writing. I find that the tenant did not give the landlord written permission to keep deposit, nor did the landlord make an application for an order.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord must pay the tenant double the amount of the security deposit and pet damage deposit.

In regard to the landlord's argument that the tenancy did not legally end until September 30, 2013, I find that section 45 of the Act permits a tenant to end a month-to-month tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

However, I find that this particular tenancy was NOT a month-to-month tenancy, but was for a fixed term. I find that it would be a violation of the agreement for the tenant to terminate the tenancy prior to the end of the fixed term.

According to section 44(1) of the Act a tenancy ends only if the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with: (i) section 45 *[tenant's notice]*; (ii) section 46 *[landlord's notice: non-payment of rent]*; (iii) section 47 *[landlord's notice: cause]*; (iv) section 48 *[landlord's notice: end of employment]*; (v) section 49 *[landlord's notice: landlord's use of property]*; (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*; (vii) section 50 *[tenant may end tenancy early]*;

**(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;**

(c) the landlord and tenant agree in writing to end the tenancy;

**(d) the tenant vacates or abandons the rental unit;**

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended. (My Emphasis)

In this instance, I find that the tenancy ended under section 45(1)(d) when the tenant abandoned the rental unit . I find that the tenancy did not end in compliance with the contract that both parties signed and that the tenancy was terminated prematurely by the tenant on June 30, 2013.

I find that the written forwarding address was communicated to the landlord by the tenant via registered mail sent on July 17, 2013 and also by email sent and acknowledged prior to that date.

I find that the landlord's failure to refund the deposit within 15 days entitles the tenant to be compensated, under the Act, for double the deposit., I find that the tenant is entitled to \$1,200.00 plus the \$50.00 cost of filing the application.

Accordingly, I hereby issue a monetary order to the tenant in the amount of \$1,250.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The tenant is successful in the application and is awarded a monetary order for the security deposit retained by the landlord.

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: August 26, 2013

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Residential Tenancy Branch

