



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord resides on June 18, 2013. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

There is a dispute between the parties as to the nature of their relationship. The respondent submitted that the applicant was hired as a nanny. The applicant testified she rented the rental unit with an agreed rent of \$550 per month but if she did childcare

duties the rent would be reduced to \$350 per month. The applicant produced a cancelled cheque payable to the respondent dated February 1, 2013 in the sum of \$500 with the notation \$350 rent/\$150 damage deposit. She also produced a second cancelled cheque in the sum of \$350 with the notation May rent. I prefer the evidence of the applicant to that of the respondent on this issue. I determined the applicant paid a security deposit of \$150 on February 1, 2013. I find that the rent was \$350 per month provided the applicant did child care duties.

In May disputes arose between the parties. The applicant described the landlord's behavior as being more "erratic and chaotic..." The landlord accused the tenant of failing to properly do her childcare duties. She also accused the tenant of having numerous unreasonable guests. The tenant denies this.

The parties discussed the ending the tenancy. Initially the respondent demanded the applicant give her 30 days notice. Later she agreed the tenant could leave without giving the proper notice. On May 20, 2013 the applicant returned home to discover that the respondent was changing the locks and had removed her belongings and placed it on the side of the building.

The tenant testified that she gave the landlord her forwarding address in writing on June 1, 2013. The landlord denies receiving it. The tenant did not keep a copy of that communication. She referred to a letter signed by a friend which states that she (the friend) saw the applicant knock on the landlord's door and when the landlord failed to respond (although she was present in the rental unit) place that envelope on her doormat. She returned a short time later to she that the envelope was no longer there. The letter states a photo was taken but the applicant did not produce that photo at the hearing.

#### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or

the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

With regard to each of the tenant's claims I find as follows:

- a. I determined the tenant failed to prove that she supplied the landlord with her forwarding address in writing on June 1, 2013. The Act requires the tenant to prove that it was received by the landlord. The landlord denies receiving it. The tenant relies on a statement from a friend but the friend did not attend the hearing. The tenant did not keep a copy of the letter. The friend's statement states a photo was taken but the applicant failed to produce a copy of that photo. The landlord stated that she has no difficulty returning the deposit. I determined the tenant is entitled to the return of the deposit in the sum of \$150 but not the doubling of the deposit.
- b. The tenant claims reimbursement of all of the rent for May. The landlord disputes this stating the tenant left willing. I determined the landlord is entitled to retain the rent for the 20 days the tenant's belonging remained in the rental unit. However, I determined the tenant is entitled to reimbursement of the rent for the 11 days remaining in May. The respondent illegally changed the locks and removed the tenant's belongings. I determined the tenancy came to an end as a result of the landlord's illegal conduct and the tenant is entitled to reimbursement of the rent for the last 11 days of May or the sum of \$124 ( $\$350 \div 31 \text{ days} \times 11 \text{ days} = \$124$ ).

- c. The landlord refused to return the tenant's postdated cheque for June. I determined the tenant acted reasonably in putting a stop payment on that cheque and is entitled to \$10 being the amount claimed.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$284 plus the sum of \$50 in respect of the filing fee for a total of \$334.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: August 20, 2013

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Residential Tenancy Branch