



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for the return of all or part of the pet damage or security deposit and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement. The tenants also applied to recover the filing fee from the landlord for the cost of this application.

The landlord named on this application (referred to in this decision as the landlord's agent) appeared for the hearing and provided affirmed testimony. One of the tenants appeared for the hearing and also provided affirmed testimony as well as documentary evidence in advance of the hearing. The tenants served the landlord's agent by registered mail with a copy of the application, Notice of Hearing documents and documentary evidence to the address provided on the notice to end tenancy for landlord's use of property which was served to the tenants by the landlord's agent during the course of the tenancy. The tenant also provided evidence from Canada Post that the landlord's agent had received and signed for these documents.

At the start of the hearing the landlord's agent confirmed receipt of the documents for this hearing from the tenants and as a result, I find that the tenants served the landlord named on this application in accordance with the Act.

During the hearing the tenant was asked about their monetary claim for \$2,130.00 which was awarded to the tenants during a previous dispute resolution hearing held on July 3, 2013 against the landlord's agent. The tenant stated that she had not received any of the monies owed to her from the landlord's agent in accordance with the Monetary Order issued to her after the hearing. It was explained to the tenant that a decision regarding this matter had already been made during the previous hearing and that this matter has to be pursued through the Small Claims court for enforcement. As a result, I dismissed this portion of the tenants' monetary claim.

Issue(s) to be Decided

- Is the landlord named on this application the landlord's agent?
- Is the tenant entitled to double the amount of the security deposit?

Background and Evidence

The tenant testified that their tenancy began with the original landlord (referred to in this decision as the landlord) on March 1, 2008 on a month-to-month basis. A written tenancy agreement was completed; however, neither party no longer has a copy nor was one produced as evidence for this hearing. The tenant testified that rent was payable in the amount of \$880.00 on the first day of each month. The tenant also paid a security deposit to the original landlord in the amount of \$440.00 on January 31, 2008 and a copy of the cheque and receipt relating to this payment was provided as evidence for the hearing.

The tenant testified that when the written tenancy agreement was signed with the landlord, a service address for him was not provided to them. The tenant testified that they continued to pay rent to the landlord and had little communication from him until they were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on December 10, 2012 by the landlord's agent.

The notice to end tenancy was provided as evidence and shows that it was served on December 10, 2013 and the effective date of the notice was February 28, 2013. The tenant confirmed that it was served in 2012 not in 2013. The notice details the landlord's name in the "From the LANDLORD" section but shows that it was signed and dated by the landlord's agent.

The tenant testified that from this point onwards they continued to have dealings and communication with the landlord's agent and provided e-mail evidence to support this. The tenants left the tenancy in accordance with the notice to end tenancy served to them by the landlord's agent on February 2, 2013.

During one of the e-mail exchanges on February 4, 2013, provided as evidence, the tenant writes to the landlord's agent requesting the return of their security deposit and provided a forwarding address. The landlord's agent responded to the e-mail on the same day stating that he had forwarded this onto the landlord and requested a copy of the tenancy agreement to determine the exact amount of the security deposit that had been paid by them.

The tenants responded by stating that they did not have a copy and that the amount of the deposit was \$440.00. On February 21, 2013, the tenants again contacted the landlord's agent by e-mail asking for the return of their security deposit and the landlord's e-mail address as they were not sure whether the one that had been provided to them by the landlord was still working and correct.

The landlord's agent replied to the e-mail, questioning why the tenants had not had their deposit back from the landlord and offered to write the tenants a cheque and invoice the landlord for this. This was the last communication the tenants had with the landlord's agent who failed to provide them with the landlord's e-mail address. The tenant testified that they still have not had their security deposit returned for several months now and as a result, claim double the amount back from the landlord in the amount of \$880.00.

The landlord's agent testified that he is not the landlord in this case and that he was simply the selling agent for the property and was serving the notice as part of the sale agreement. He further testified that he has only been involved in a small part of a lengthy tenancy and should not be the one named as the landlord on this application.

When questioned as to why the landlord's agent had not forwarded this information onto the landlord, he testified that he had provided the details to the landlord who stated that he was not going to return the security deposit because the tenants had caused damage to the rental suite. The landlord's agent testified that he had offered to pay the tenants their security deposit back but could not as the tenants had failed to give him a copy of the tenancy agreement in order to verify the exact amount they had paid. The landlord's agent also refused to consent to an amendment of the tenant's application to include the original landlord as part of this dispute resolution proceeding.

### Analysis

Section 1 of the Act defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, exercises powers or performs duties under this Act, the tenancy agreement or a service agreement.

In this case, I find that the landlord's agent, named by the tenants on this application, meets the requirement of Section 1 of the Act as above and therefore cannot be absolved of his duties under the Act in dealing with the tenants' security deposit. This is based on the fact that it was the landlord's agent that signed the notice to end tenancy and served this to the tenants and that he was still continuing to receive instructions and acting on behalf of the landlord, thus exercising a power and performing a duty under the Act. In addition the landlord's agent continued to have communication with the

tenants by e-mail and received the tenant's forwarding address on February 4, 2013 as evidenced by his response to the tenant's e-mail containing the forwarding address. Even though the landlord's agent offered to pay the security deposit back to the tenants, I find that he failed to comply with the Act in dealing appropriately with the tenants' security deposit.

Section 38(1) of the Act states that, within 15 days of the landlord receiving the tenants' forwarding address in writing after the tenancy ends, the landlord must repay the security deposit or make an application to claim against it. I accept that the tenancy was ended by the landlord in accordance with the Act by the notice to end tenancy. I am also satisfied that the tenant provided the landlord with a forwarding address in writing as required by the Act based on the e-mail evidence detailed above which also shows the landlord's agent received it. As a result, the landlord or landlord's agent on behalf of the landlord was required to repay the security deposit or make an application to claim against it within 15 days of receiving it, neither of which was done.

Section 38(6) of the Act states that if a landlord does not comply with the above, the landlord must pay the tenant double the amount of the security deposit. Therefore the tenants are entitled to \$880.00 plus interest which is calculated as \$6.06 using the Deposit Interest Rate Calculator on the Residential Tenancy Branch website. As the tenants have been successful in this matter, I also award the tenants the filing fee of \$50.00 for the cost of this application.

### Conclusion

For the reasons set out above, I grant a Monetary Order in the amount of **\$936.06** in favor of the tenants pursuant to Section 67 of the Act. This order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) 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: January 09, 2014

