



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent (the agent), the landlord's son, testified that the landlord received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on October 31, 2013. I am satisfied that the landlord was served with this package in accordance with the *Act*.

### Preliminary Matters

The tenant who attended this hearing (the tenant) confirmed that he had received copies of the landlord's written evidence sent by the landlord or his agent by registered mail. I find that the landlord has served this evidence in accordance with sections 88 and 90 of the *Act*.

The tenant testified that he included written evidence with the dispute resolution hearing package sent by registered mail on October 31, 2013. The agent testified that the landlord never received this written evidence. Section 90 of the *Act* establishes that documents sent by registered mail are deemed served on the fifth day after their mailing. I note that the documents entered into written evidence by the tenant comprised of copies of two shelter assistance cheque payments made on the tenants' behalf by the Ministry of Social Development and Social Innovation (the Ministry), apparently for November 2013. These documents are date stamped November 29, 2013, by the Ministry. Since documents date stamped November 29, 2013 could not possibly have been sent to the landlord by registered mail on October 31, 2013, as was claimed by the tenant, I have not considered the tenants' written evidence. I find the agent's claim that this evidence was not received has more credibility than the tenant's evidence that it was included with the tenants' dispute resolution hearing package.

At the beginning of the hearing, both parties referred to other dispute resolution hearings that they have initiated with respect to this tenancy. The tenant testified that there was a December 6, 2013 hearing of the tenants' application to obtain a return of their personal possessions from the landlord after an October 26, 2013 fire forced the tenants to vacate the rental unit. From that hearing, an Arbitrator issued a December 6, 2013 decision in which she ordered the landlord to allow the tenant(s) to access the rental property until December 20, 2013, for the purpose of removing personal belongings from the property on or before that date. Although the Arbitrator referenced the tenants' dispute regarding the return of rent allegedly paid by the tenant(s) for November 2013 and for the return of their security deposit for this tenancy, she noted that these issues were scheduled for a hearing in February 2014, the matter currently before me.

The agent testified that the landlord has a separate hearing of the landlord's application for a monetary award for unpaid rent owing from this tenancy that is scheduled for a hearing on March 6, 2014. Some of the landlord's written evidence addresses his claim that unpaid rent remains owing from this tenancy. The agent also testified that there was damage arising from this tenancy.

As the landlord's application for a monetary award for the recovery of unpaid rent is currently scheduled for a hearing on March 6, 2014, I find that the hearing scheduled for that date is the appropriate forum for considering all matters relating to the payment or non-payment of rent for this tenancy. In accordance with Rule 2.3 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure, I dismiss the tenant's application for his alleged overpayment of rent for the month of November 2013, with leave to reapply only if the March 6, 2014 hearing is unable to render a final and binding decision with respect to the November 2013 portion of the landlord's claim for unpaid rent allegedly owing from this tenancy.

#### Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit for this tenancy as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

#### Background and Evidence

This tenancy commenced on November 1, 2012 as a periodic tenancy. Monthly rent for this entire rental unit was set at \$1,300.00, payable in advance by the first of each month. The agent testified that the \$650.00 security deposit for this tenancy was paid in stages, but was totally paid by approximately December 15, 2013.

The agent testified that no joint move-in condition inspection report was produced by the landlord for any joint inspection of the rental unit that occurred when this tenancy commenced.

The tenant testified that he provided the landlord with a forwarding address in writing in late October 2013, after the rental unit's destruction by fire required the tenants to vacate the premises. Although his forwarding address subsequently changed, the agent testified that the landlord had received the tenants' forwarding address by December 6, 2013.

The landlord's application for dispute resolution to be heard on March 6, 2014 does not include a request for authorization to retain the security deposit for this tenancy. The only item cited in that application is a request for the recovery of unpaid rent owing at the end of this tenancy.

The tenants applied for a monetary award of \$1,125.00. This amount reflected their request for a return of their security deposit and rent that was paid on their behalf by the Ministry for November 2013.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after December 6, 2013, to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of the security deposit for this tenancy, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution to retain any portion of the security deposit for this tenancy, nor has the landlord returned the security deposit for this tenancy in full within the required 15 days. The tenant gave sworn oral testimony that the tenants have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the value of the security deposit for this tenancy with interest calculated on the original amount only. No interest is payable.

### Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants an award of double the security deposit for this tenancy:

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> ( $\$650.00 \times 2 = \$1,300.00$ )	\$1,300.00
<b>Total Monetary Order</b>	<b>\$1,300.00</b>

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenants' claim for losses associated with their alleged overpayment of rent for November 2013, with leave to reapply only in the event that the March 6, 2014 hearing is unable to render a final and binding decision with respect to the November 2013 portion of the landlord's claim for unpaid rent allegedly owing from this tenancy.

In closing, I also note that the parties are responsible for serving one another with all documents regarding the March 6, 2014 hearing of the landlord's claim for unpaid rent and the landlord's apparent decision to offset rent received in November 2013 against sums that the landlord maintains are owing for unpaid rent. Copies of documents submitted by the parties for the purposes of the consideration of the tenants' current application will **not** be copied by the RTB and redirected to the hearing of the landlord's application. If the parties wish that the Arbitrator hearing the March 6, 2014 application consider any of the materials already submitted to the RTB regarding either the December 6, 2013 hearing or the current hearing, the parties should ensure that new copies of these documents are served both to the RTB and the other party.

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: February 12, 2014

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Residential Tenancy Branch

