



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the tenant for a monetary order for a refund of double the security deposit and pet damage deposit and compensation for moving costs.

All three parties, including the applicant tenant, the respondent landlord and the respondent owner were in attendance. 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 affirmed testimony and relevant evidence that was properly served.

### **Preliminary Matter**

Two previous hearings were held on the tenant's application seeking a refund of his security deposit.

By way of background, the owner of the home (M) had rented the two suites to (JR). JR then occupied one suite and sub-rented the other suite to the applicant tenant, Mr. B in February 2013. The sub-landlord JR and the applicant tenant, Mr. B signed a written tenancy agreement for a six-month fixed term tenancy, starting in mid-February 2013. The rent charged was \$1,000.00 per month and the tenant also paid JR a \$500.00 security deposit and a \$500.00 pet damage deposit.

However, early in April 2013, JR moved out of the complex and left the subtenant, Mr. B, still occupying the second suite. JR relinquished possession to the owner, M, Mr. B remained until in the second suite until April 25, 2013 and then vacated of his own

volition, after which he sought a refund of his security deposit and pet damage deposit from both his landlord JR and the owner M. The deposit was not refunded.

A previous hearing was held on July 26, 2013 in which the tenant claimed a refund of his security deposit from JR. At that hearing the arbitrator found:

*“(Mr. B) was a subtenant and entered into a tenancy agreement with JR. When JR moved out, the tenancy ended.” (my emphasis)*

The arbitrator at the hearing, held on July 26, 2013, found that Mr. B continued to rent the unit and dealt directly with the owner of the home, M. In the decision dated July 26, 2013, the tenant’s application was dismissed with leave to reapply because the tenant had only named JR in the style of cause and failed to name the owner, M.

A second hearing was held on December 10, 2013 in which the tenant was still seeking a refund of double the security deposit against the owner M. This application was also dismissed with leave. The arbitrator found that the tenant should have included both the Owner, M, and the sub-landlord, JR in the style of cause and found that JR had not been served.

The application before me is the tenant’s third application naming both his landlord, JR, and the owner M in the monetary claim for a refund of his security deposit. Both the previous owner, M, and the previous landlord, JR, have been served and both attended this hearing along with the applicant tenant.

### **Issues to be Decided**

- Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?
- Is the tenant entitled to monetary compensation pursuant to *section 7* and *section 67* of the Act?

### **Background and Evidence**

The tenant is seeking to receive a monetary order for the return of double the security deposit not refunded by the landlord and monetary compensation for damages and moving costs.

The tenant testified that he paid \$500.00 security deposit and \$500.00 pet damage deposit to his landlord JR, but, when his landlords vacated their unit, they declined to refund his security deposit. The tenant testified that JR told the tenant that his security deposit was already deposited into the owner’s (M’s) account. The applicant tenant

testified that he was not consulted and did not give permission for his security deposit to be transferred to M or any other third party by his landlord, JR.

The tenant testified that he encountered significant disruption in his tenancy after his landlord JR left. The tenant testified that the owner of the building, M, apparently did not initially agree that he could remain in the second suite after his landlord's, JR, relinquished possession.

However, after some discussions between the owner and the tenant, the tenant was permitted to stay rent-free until he willingly vacated near the end of April 2013. No new tenancy agreement was signed between the tenant, Mr. B and the owner, M and no rent exchanged hands.

The tenant testified that, after he vacated, he demanded that M refund his security deposit and pet damage deposit. The tenant testified that the owner, M, stated that he was not holding any funds in trust on behalf of the tenant and refused to pay the tenant.

The tenant is seeking a refund of \$2,000.00 representing double the \$500.00 security deposit and the \$500.00 pet damage deposit.

The sub-landlord, JR, testified that they are no longer holding the tenant's security deposit and pet damage deposit as they had deposited these funds into the account of the owner, M. JR's position is that the written fixed term tenancy agreement that had been signed between JR and Mr. B was "assigned" or transferred to M in April 2013 and the deposit funds are therefore now being held in trust by M for the tenant. No documentation was submitted to support that there was an agreement between JR and M verifying that M was bound by the fixed term tenancy contract signed by JR and the applicant tenant, Mr. B.

The owner, M, testified that only when he terminated the tenancy with JR, did he discover that their subtenant, Mr. B, was still residing in the second suite, pursuant to a 6-month fixed term tenancy with JR. M testified that he never agreed to take over any portion of the fixed term tenancy negotiated between JR and Mr. B, and at no time did he accept the "reassignment" of this written contract, nor did he receive funds to hold in trust for the tenant. The owner, M, testified that he only let the tenant remain in the suite because of the circumstances. The owner, M, is adamant that he does not owe the tenant a refund of the security and pet damage deposits.

### **.Analysis**

#### **Security Deposit Claim by Tenant**

Section 38 of the Act states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find as a fact that the landlord, JR, failed to refund the tenant's security and pet damage deposit, held in trust, when the tenancy between them ended by virtue of JR moving and giving up possession of both the rental units in early April 2013.

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit beyond the end of their tenancy if the tenant agrees to this in writing at the end of the tenancy. If the tenant's permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit and must refund it.

Although, under the Act, a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant by making an application for dispute resolution and successfully obtaining a monetary order to retain the funds, I find that the landlord, JR, did not do this.

I find that the landlord must either make the application or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address, failing which, section 38(6) provides that the landlord must pay the tenant double the amount of the security deposit.

I make no findings as to whether or not JR deposited the security deposit and pet damage deposit trust funds into a third party's account. I further make no findings with respect to the issues of assignment or reversion discussed in the decision dated July 26, 2013.

I am bound by the findings of the previous two decisions and therefore, I accept and confirm the finding that that the tenant, Mr. B's tenancy with JR ended when JR vacated. The Act clearly provides that, when a tenancy ends, the security deposit must be administered in accordance with section 38 of the Act.

In regard to the tenant's claims for monetary compensation for moving costs, I find that the tenant terminated the tenancy and is not entitled to the cost of moving. In regard to other losses endured by the tenant, including loan interest, filing fees, registered mail and other costs of service I find that administrative costs for preparing for the Dispute

Resolution Hearing, are not compensable expenditures covered under any provision of the Act and must therefore be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$2,000.00, comprised of \$1,000.00 for double the security deposit wrongfully retained and \$1,000.00 for double the pet damage deposit.

Although I have found that, under the Act, the security and pet damage deposits should rightfully have been refunded to Mr. B by JR in April 2013 when the tenancy between them ended, I also find that I am obligated by law to defer to previous decisions.

Therefore I find it necessary to name both the landlord JR, and the owner M, as jointly and severally liable to repay double Mr. B's security deposit and pet damage deposit in the amount of \$2,000.00. This means that the tenant can pursue the payment against any of the parties named in the style of cause, or all three.

I hereby grant the tenant a monetary order against the parties named as respondents in the application, in the amount of \$2,000.00. This order must be served on the respondent(s) and, if unpaid, may be enforced in Small Claims Court if necessary.

The remainder of the tenant's application is dismissed without leave.

### **Conclusion**

The tenant is partially successful in the application and is awarded a refund of double the security and pet damage deposits. The tenant's claim for damages is dismissed.

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 20, 2014

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Residential Tenancy Branch

