



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 3, 2013, by the Tenants to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for this application.

The Tenants submitted documentary evidence which indicates the Landlord was served with copies of the Tenants' application for dispute resolution and the Notice of dispute resolution hearing, on December 3, 2013, by registered mail. Canada Post receipts were provided in the Tenants' evidence. Based on the submissions of the Tenants I find the Landlord is deemed served notice of this proceeding on December 8, 2013, five days after it was mailed, in accordance with section 90 of the Act.

The Tenants provided affirmed testimony that they had received evidence from the Landlord which included copies of: two tenancy agreements; a completed condition inspection report form; a time line of events; e-mails, invoices, and photos. They stated that they did not receive an application or notice that a claim had been filed against them by the Landlord.

I note that the Landlord submitted the same evidence to the Residential Tenancy Branch (RTB) by fax on March 6, 2014. Despite serving evidence to the RTB and the Tenants, the Landlord did not appear at the scheduled teleconference hearing. As I have found above that the Landlord was served notice of this proceeding, in accordance with the Act, I proceeded to hear the merits of the Tenants' claim in the Landlord's absence.

Issue(s) to be Decided

1. Are both applicants Tenants in this dispute?
2. Have the applicants proven entitlement to a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenants testified that there was two tenancy agreements signed relating to this rental unit during the period of May 1, 2011 to October 18, 2013. During that time there were various tenants and occupants who resided in the rental unit.

Specifically, the first tenancy agreement was signed on April 5, 2011 and May 1, 2011 listing L.R. and D.M. as Tenants. A security deposit of \$650.00 was paid on or before May 1, 2011. L.M. became an occupant throughout the summer of 2011. D.M. moved out and later L.R. moved out which left L.M. occupying the unit.

A second tenancy agreement was signed on December 20, 2011 listing L.M. and J. C as the Tenants effective January 1, 2012. Rent was payable on the first of each month in the amount of \$1,300.00 and the Landlord transferred the security deposit of \$650.00 over from previous tenancy agreement to this one.

The Tenant testified that J.C. moved out and was removed from the tenancy agreement as supported by the message of January 19, 2013, that was provided in the Landlord's evidence. L.R. began occupying the rental unit in early January 2013 until the end of August 2013 but was never added to the tenancy agreement.

L.M. remained as the only Tenant listed on the tenancy agreement and when she had to move out to go back to school in September 2013 the Landlord agreed to allow the Tenants' two friends to occupy the rental unit. The tenancy was ended and the full month's rent was paid for October 2013. The Tenant said they had their friends attend the move out inspection on their behalf. The Landlord had her agent conduct the move out inspection on October 18, 2013, at which time she told their friends that the unit looked great and was okay for people to move in right away.

The Tenants testified that they initially provided the Landlord with their forwarding address by e-mail. They later served the Landlord with their forwarding address by registered mail, on November 12, 2013, as supported by their evidence. The Landlord sent them an e-mail money transfer for only a portion of the deposit so they refused to accept it. Then in early December, 2013 they received a cheque for \$191.66 from the

Landlord dated December 1, 2013. They have refused to cash this cheque as it is not for the correct amount and are now seeking the return of double their deposit.

The Tenants stated they were told that the Landlord re-rented the unit and let people move in before the end of October 2013, even though they had paid rent for the entire month of October. They argued that they had attempted to end the tenancy mid month and pay only a half of a month's rent but the Landlord refused only to rent it to other tenants before the first of the month. They are seeking to recover a portion of the rent paid for October 2013 in the amount of \$650.00.

### Analysis

Given the evidence before me, in the absence of any testimony from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenants and corroborated by the documentary evidence before me.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a written tenancy agreement to include the new occupant as a tenant.

In this case the evidence supports that L.R. was a Tenant from May 1, 2011 to December 31, 2011 and his tenancy agreement became null and void when L.M. and J.C. entered into a new written tenancy agreement that became effective January 1, 2012. J.C. was later removed from the tenancy agreement, which left L.M. the sole remaining Tenant on the tenancy agreement.

Although L.R. moved back into the rental unit he was never formally added to the existing tenancy agreement. Therefore, I find L.R. was an occupant, as defined by the *Residential Tenancy Policy Guideline Manual*, as listed above, and is not a party to this dispute. Accordingly, I proceeded with this matter with L.M. as the sole applicant to this dispute.

Section 44(1)(d) of Act stipulates that a tenancy ends when the tenant vacates the rental unit.

Notwithstanding the Tenant's argument that they paid the full amount of rent for October 2013, the evidence supports that the Tenant and occupants had vacated the unit on or

before October 18, 2013. The Tenant was represented at the move out inspection on October 18, 2013, at which time possession of the unit was returned to the Landlord. Accordingly, I find the tenancy ended on October 18, 2013, pursuant to section 44(1)(d) of the Act.

The evidence supports the Tenant served the Landlord with her forwarding address on November 12, 2013, by registered mail. The Landlord is deemed to have received the forwarding address on November 17, 2013, in accordance with section 90 of the Act. Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than December 2, 2013. The Landlord sent a partial refund by e-mail transfer which was refused. A second payment was sent by mail on December 1, 2013, which the Tenants refused to cash. The partial refund is not deemed received until December 6, 2013, five days after it was mailed in accordance with the Act.

Accordingly, I find that the Landlord has failed to comply with Section 38(1) of the *Act* because she did not return the full amount of the deposit and did not file an application for dispute resolution. Therefore, the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenant has succeeded in proving the merits of her claim and I award her return of double the security deposit (2 x \$650.00) plus interest of \$0.00 in the amount of **\$1,300.00**.

The Tenant has claimed \$650.00 as a refund of rent paid for October 2013, because they were required to pay the full month's rent and the Landlord re-rented the unit allowing the new tenants to occupy the rental unit before the end of October 2013.

As noted above, I found the Tenants ended the tenancy and returned possession of the unit to the Landlord on October 18, 2013. There is no evidence that would indicate the Tenants were forced to give up the unit early; rather, the evidence suggests that it was the Tenants' personal choice to vacate early. Furthermore, although there is evidence that would suggest the Landlord allowed the new tenants to occupy the unit early, there

is no evidence to prove the Landlord collect rent for any period prior to November 1, 2013. Accordingly, I find there is insufficient evidence to support their claim for a partial rent refund, and the claim is dismissed, without leave to reapply.

The Tenant has been partially successful with their application; therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

This claim is HEREBY AMENDED to remove L.R. as applicant to this dispute.

The Tenant has been awarded a Monetary Order in the amount of **\$1,350.00** (\$1,300.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: March 28, 2014

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Residential Tenancy Branch

