



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kapoor Group of Companies  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application. The details portion of the application claims double the amount of the pet damage deposit and security deposit.

The tenant and the named landlord attended the hearing, and the named landlord also appeared as agent for the landlord company.

The hearing did not conclude on its first day and was adjourned for a continuation of testimony. The parties were ordered to provide all evidence that they intended to rely on to the Residential Tenancy Branch and to each other within 3 days of the date of the first hearing, and the landlord was ordered to provide a copy of the tenancy agreement. During the second day of the hearing, it was determined that the landlord had provided a copy of the tenancy agreement to the Residential Tenancy Branch but not to the tenant, stating that the landlord did not understand that a copy was also to be sent to the tenant. The tenancy agreement provided for this hearing has not been provided to the tenant, and therefore, I will not consider it as evidence for this hearing.

The parties each gave affirmed testimony, provided other evidentiary material prior to the commencement of the hearing, and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for all or part or double the amount of the pet damage deposit or security deposit?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed term tenancy began on August 1, 2012, expired on July 31, 2013 and then reverted to a month-to-month tenancy which ultimately ended on February 1, 2014. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00. At the end of the tenancy, the parties had arranged for a move-out condition inspection to take place on February 4, 2014. The tenant had a copy of the tenancy agreement and wrote her forwarding address on it. The landlord told the tenant the tenancy agreement was no longer required so he kept it.

The tenant also sent the landlords a letter of March 4, 2014 by registered mail requesting the security deposit and providing a forwarding address. On March 22, 2014 the tenant received the full security deposit and pet damage deposit by mail, totalling \$1,500.00. The tenant claims that the landlords did not return either deposit within 15 days as required by the *Residential Tenancy Act* and the tenant filed the application for dispute resolution claiming double the amount on March 4, 2014.

The tenant further testified that the landlord told her on the 19<sup>th</sup> of February that he would get a cheque sent, and on February 25, 2014 the tenant again asked by email and received a response the next day stating that it hadn't been sent yet.

The landlord testified that he is not the landlord and submits that he receives no compensation and has no authority to write cheques on behalf of the landlord but merely helps the landlord with tenancies by dealing with maintenance issues and tenants' needs. The landlord is a learned doctor who is elderly with health issues.

The landlord also submits that the tenant smoked in the rental unit contrary to the tenancy agreement, the tenant was permitted to stay in the rental unit for 4 extra days

without charge, and that the tenant threw out some furniture belonging to the landlord. Rather than making an application for dispute resolution, he decided to return the deposits to the tenant and advised her on February 19, 2014 that he would ask the learned doctor to write the cheque, and the tenant was fine with that. The learned doctor was in and out of hospital with health problems and was not able to provide the cheque until February 26. The landlord learned on March 5 when he was served with the tenant's application that she had not received the cheque so he directed the bank to put a stop payment on it and another was obtained from the learned doctor. The original cheque never surfaced.

He further submits that the learned doctor was not physically able to write the cheque any sooner.

### Analysis

In this case, the named landlord submits that he is not a landlord; he receives no compensation, but merely helps the landlord with tenancies by dealing with maintenance issues and tenants' needs. He submits that he has no authority to write a cheque but did submit that he directed the learned doctor's bank to put a stop payment on the first cheque. The *Residential Tenancy Act* defines a "landlord" as the owner, the owner's agent, or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the *Act* or the tenancy agreement. He submitted that he made the decision to not apply for dispute resolution for the tenant's alleged breaches and decided to return the deposits. Even though he may have no authority to write cheques, I find that he is an agent of the landlord as described in the *Act*, having authority to make decisions on behalf of the landlord.

I further find that the landlord has failed to provide any evidence of having sent the first cheque. He stated that it never surfaced so I can only assume that it didn't appear in a bank statement. All I am left to believe is that either it never got sent in the first place or it was lost by Canada Post.

However, the facts are clear – the tenant provided a forwarding address in writing on February 4, 2014, the tenancy ended by that date as well, and the tenant filed an application for dispute resolution on March 4, 2014, and received the deposits on March 22, 2014. The *Act* states that a landlord must return the deposits in full to the tenant or apply for dispute resolution claiming against them within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must be ordered to repay the

tenant double the amount. Regardless of the health of the learned doctor, the tenant is entitled under the *Act* to double the amount, and I so order.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order I favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,550.00.

This order is final and binding and may be enforced.

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: July 04, 2014

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Residential Tenancy Branch

