



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sunnus Group  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with an application by the tenant seeking the return of double the security and pet deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. This matter was originally heard by another Arbitrator where the tenants were successful in their application. The landlord filed an application for Review Consideration where she was successful at having the original decision and order suspended pending the outcome of this hearing.

### Issue to be Decided

Should the original decision and order be confirmed or set aside?

### Background

The tenancy began on April 1, 2010 and ended on December 31, 2011. The tenants were obligated to pay \$2200.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$1100.00 security deposit and an \$1100.00 pet deposit. Move in and move out condition inspections were conducted.

The tenants gave the following testimony:

The tenants stated that JH moved in “around June or July of 2011”. The tenants stated that JH was present at the move out inspection when he provided his address to the agent for the landlord. The tenants stated that the landlord returned \$1117.00 of the deposits but “weren’t sure when that was”. The tenants stated that they are seeking the return of double the deposits minus what they’ve already received plus the filing fee.

The landlord gave the following testimony:

The landlord stated that JH was not their tenant. The landlord stated that a One Month Notice to End Tenancy for Cause was issued on December 2, 2011 on the basis the tenant had assigned or sublet the rental unit without the landlords' written consent. The landlord stated that GC was her tenant and that he and his girlfriend were the names on the tenancy agreement. The landlord stated that she had never received notice that JH was to be a tenant or agent for the parties. The landlord stated that she had informed JH she would not forward any deposits to him as he was not her tenant. The landlord stated that the cheque for GC was left in the concierge office for him. The landlord stated that she had advised GC by e-mail that he had not authorized or notified her of any assignment of the deposits. The landlord stated that GC had abandoned the unit without providing his forwarding address. The landlord stated that she has never had his address until the she was served with the decision and order from a hearing she was not served for.

### Analysis

In GC's own testimony he stated "we had a three bedroom suite and needed help to pay the rent". The tenants own description of the arrangement was that JH was an occupant and not a tenant. Residential Tenancy Policy Guideline 13 states 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 tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. The landlord was clear that there was no agreement or authorization to have JH as a tenant and thus served the notice to end tenancy.

In addition Section 39 of the Act states:

### **Landlord may retain deposits if forwarding address not provided**

Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I find that JH was an occupant. GC is the tenant that had legal claim to the deposit. GC did not have an agreement or an arrangement to have the landlord return the deposit to JH. Despite the landlords e-mail of January 13, 2012 informing GC that they wish to forward funds to him unless he specified otherwise, GC did nothing. I find that the tenant did not provide his forwarding address in writing in accordance with Act within one year of the tenancy ending and therefore has extinguished his right to claim against it.

The tenant has not been successful in his application.

### Conclusion

The decision and order of April 4, 2014 is hereby set aside and is of no effect or force.

The tenants' application is dismissed in its entirety without leave to reapply.

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: June 18, 2014

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Residential Tenancy Branch

