



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Yau Fat Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a return of her deposits and a monetary order for money owed or compensation for damage or loss.

The above parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter-* At the outset of the hearing when discussing the documentary evidence, the tenant denied receiving the landlord's evidence. The landlord stated that their evidence was sent via courier service and that there was confirmation that the tenant or someone at her address signed for the documents.

While I find that the landlord provided convincing evidence that the tenant was served in the time and manner required by the Rules, the tenant was offered the opportunity for an adjournment of the hearing in order to obtain a copy or another copy of the landlord's evidence. The tenant was informed that I would admit and consider the landlord's evidence. The tenant declined such opportunity, and wished to proceed with the hearing.

*Preliminary matter #2-* The landlord's agent presented that the tenant had incorrectly listed HT as the respondent/landlord in her application, stating that she and HT were representatives of a corporate landlord. It is noted that the tenant did list the corporate landlord as a landlord in her application, prior to striking through that name.

As the written tenancy agreement submitted into evidence by the landlord shows the corporate landlord as the landlord, I have included that name in the style of cause page to reflect that corporate landlord as a landlord, and designated HT as a landlord's agent.

Issue(s) to be Decided

Is the tenant entitled to a return of her deposits and additional monetary compensation?

Background and Evidence

I heard undisputed evidence that this tenancy began on January 1, 2005, ended on September 20, 2013, monthly rent began at \$1350, and by the end of the tenancy, monthly rent was \$1570.

The tenant's monetary claim is \$3801.37, explained as a "holding security deposit Instalment #1" for \$675 paid December 29, 2004, a "holding security deposit Instalment #2" for \$675 paid December 31, 2004, a "damage" deposit for \$675 paid January 31, 2005, a "pet deposit" for \$350 paid January 31, 2005, and interest of \$84.02, for a total of  $\$2459 \times 2 = \$4918.04$ . From this amount, the tenant subtracted outstanding rent owed to the landlord for August 2013, for \$70 and prorated rent of \$1046.67 for September 1-20, 2013.

The tenant submitted that the landlord collected the above four deposits at or near the beginning of the tenancy, as shown by her receipts she supplied into evidence, and that the landlord has failed to return any of the deposits, despite being advised of the tenant's written forwarding address by registered mail on May 31, 2014.

The tenant submitted further that the landlord failed to conduct a move-in or move-out inspection of the rental unit and collected more deposits than the Act allowed.

Due to all the above, the tenant is entitled to a return of all her deposits, doubled, less the amounts owed to the landlord, according to the tenant.

The tenant's relevant documentary evidence included a written summary supporting her application and a copy of the written forwarding address supplied to the landlord.

*Landlord's response-*

The landlord denied that the tenant paid anything other than a security deposit of \$675 near the beginning of the tenancy. In explanation and in defence of the tenant's application, the landlord pointed to their documentary evidence, which was a yellow coloured replica of their receipts for payments from the time period of December 2004 and January 2005.

The landlord pointed out that the tenant had altered the receipts she submitted into evidence to appear as though she paid these extra deposits.

As to the alleged deposit of December 29, 2004, the landlord submitted that the cheque the tenant wrote on December 29, 2004, in the amount of \$675 for a deposit was returned to the tenant at her request, as she stated she would rather pay in cash. The landlord submitted that the tenant altered this document by writing "DP" on her receipt, which was not shown on the receipt as shown by the landlord. The landlord, HT, further submitted that was not his handwriting appearing on the tenant's receipt.

The landlord submitted further that the receipt dated December 31, 2004, shows that the tenant paid \$675 on December 31, 2004, as a security deposit. The landlord submitted further that the tenant's copy of the receipt shows additional handwriting from someone else stating that the payment was "paid in cash at noon to landlord" and additionally "sec. dep".

As to the payment of \$1025 on January 31, 2005, the landlord submitted that this was a partial payment of rent for February 2005, as noted in their receipt, with the balance being paid by an unemployment cheque, as noted in their evidence attached. The landlord submitted further that the copy of the receipt submitted by the tenant was altered as the tenant wrote in "pet d.d. (\$350)".

The landlord submitted that the tenant never paid more than \$675 as a security deposit, on December 31, 2004, and has not paid a pet damage deposit, as noted in the written tenancy agreement.

The landlord's additional relevant documentary evidence included a Decision, obtained as the result of a prior dispute resolution proceeding between the parties. In that Decision of January 14, 2013, another Arbitrator recorded the tenant paid a security deposit of \$675 at the start of the tenancy. The parties settled their differences, which were recorded in the Decision, and the other Arbitrator ordered the landlord to retain the tenant's security deposit and interest totalling \$698.89 in partial satisfaction of their monetary award of \$1669.

#### *Tenant's rebuttal-*

The tenant contended that she made notes on her copy of the receipts in order to keep a reminder to herself.

#### Analysis

After a review of the oral and written evidence, I find the tenant submitted insufficient evidence to support her application. I could not rely on documents which had been altered by the tenant, as they appear to be made to suit her purposes. I find the landlord's evidence supports the tenant paid a single security deposit of \$675 on December 31, 2004.

In addition and more important, I also found that the matter of the tenant's security deposit has been previously decided upon in the Decision of January 14, 2013, when another Arbitrator found that the tenant had paid \$675. The other Arbitrator also ordered the landlord to retain the tenant's security deposit and interest to partially satisfy the landlord's monetary order from that Decision. As this issue, the tenant's security deposit, has previously been decided upon by the Decision issued by another Arbitrator on January 14, 2013, I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*.

As the landlord was ordered to retain the tenant's security deposit in the January 14, 2013 Decision, I also find that they were not obligated to return the tenant's security deposit at the end of the tenancy.

Due to the above, I find the tenant has not supported her application and I dismiss the tenant's application, without leave to reapply.

### Conclusion

The tenant's application 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: November 1, 2014

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Residential Tenancy Branch

