



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlords, was done in accordance with section 89 of the *Act*; served by registered mail on May 23, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlords were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to recover double the security and pet deposits?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The tenant testified that this tenancy started on June 01, 2011 for an initial term of one year. After this fixed term the tenancy reverted to a month to month tenancy. Rent for this unit was \$1,200.00 per month until September 01, 2012 when the landlord illegally increased the rent to \$1,300.00. The tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00 on June 01, 2011. The tenant testified that the landlords did not conduct a move in condition inspection of the unit at the start of the tenancy and no inspection was done at the end of the tenancy.

The tenant testified that she had previously given her forwarding address to the landlord verbally but did not recall the date. The tenant testified that she believes the landlord wrote down the tenants forwarding address at that time. The tenant testified that the landlords have not returned the tenants security or pet deposit and the tenant provided an email to the landlords on May 08, 2014 requesting the return of the security and pet deposits and provided the forwarding address again. The tenant testified that the landlords have engaged in email correspondence with the tenant concerning this matter and some copies of the emails have been provided in documentary evidence.

The tenant testified that there was no damage done to the unit and the unit was left clean. The tenant testified that she has never given the landlords written permission to keep all or part of the security or pet deposit. There was a discussion about the landlords keeping half of the security deposit but this was only discussed verbally and as the landlords have not returned any of the deposits within 15 days of receiving the tenants forwarding address the tenant seeks to recover double the security and pet deposit to the amount of \$2,400.00. The tenant testified that as the landlords did not do the inspections at the start and end of the tenancy the landlords have also extinguished their right to file a claim against the security or pet deposit for damages.

The tenant testified that the landlords illegally increased the rent by \$100.00 a month on September 01, 2012. The landlords did not give the tenant a three month rent increase

notice and the amount is far higher than the amount of rent increase permitted under the *Act*. The landlord just informed the tenant verbally that the rent was going up and asked the tenant to provide postdated cheques. The tenant testified that at the time she did not know it was not a legal rent increase and simply paid it to avoid being evicted. The tenant testified that she did change her bank account in November 2012 so has not been able to access bank statements showing the rent increase from September 01, 2012.

### Analysis

With regard to the tenant's claim to recover double the security and pet deposit; I refer the parties to s. 38(1) of the *Act* that says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlords contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security and pet deposit for damages is extinguished.

When a landlord's right to claim against the security and pet deposit has been extinguished a landlord is not entitled to file a claim to keep the security and pet deposit and if the deposits have not been returned to the tenant within 15 days of either the end

of the tenancy or the date the tenant give the landlords their forwarding address in writing the landlords must pay double the security and pet deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on May 08, 2014. As a result, the landlords had until May 23, 2014 to return the tenants security and pet deposit. As the landlords failed to do so, the tenant has established a claim for the return of double the security and pet deposit to an amount of **\$2,400.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security or pet deposit for the term of the tenancy.

With regard to the tenants claim for a Monetary Order to recover the illegal rent increase; I refer the parties to s. 41, 42(2), 42(3) and 43 of the *Act* which states:

**Rent increases**

*41 A landlord must not increase rent except in accordance with this Part.*

**Timing and notice of rent increases**

*42 (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*

*(3) A notice of a rent increase must be in the approved form.*

**Amount of rent increase**

*43 (1) A landlord may impose a rent increase only up to the amount*

*(a) calculated in accordance with the regulations,*

*(b) ordered by the director on an application under subsection (3), or*

*(c) agreed to by the tenant in writing.*

*(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.*

*(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.*

*(4) [Repealed 2006-35-66.]*

*(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.*

I have considered the tenants evidence before me and find the tenant has sufficient evidence to show that at least from November, 2012 the tenant was paying an increased rent of \$1,300.00. The tenancy agreement shows that rent was \$1,200.00 at the start of the tenancy. The landlord has not appeared or provided any evidence to show that a legal rent increase notice was provided to the tenant or that the landlord had requested approval from the Director of the Residential Tenancy Office to increase the rent more than the allowable amount for 2012. The allowable rent increase for 2012 was 4.3 percent and for 2013 it was 3.8 percent.

Consequently I am satisfied with the undisputed testimony before me that the tenants rent was increased in non-compliance with s. 41, 42 and 43 of the *Act*. Therefore, I find, pursuant to s. 43(5) of the *Act*, that the tenant is entitled to recover the increase. The tenant has provided a bank statement showing an amount paid for rent of \$1,300.00 in November, 2012. I therefore find I must limit the tenants claim from November, 2012 to April 2014. The tenant has therefore established a claim for **\$1,800.00** pursuant to s. 67 of the *Act*.

As the tenants claim has merit I find the tenant is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$4,250.00**. The Order must be served on the respondents. If the respondents fail to pay the Order, the Order is enforceable through the Provincial (Small Claims) Court 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: October 02, 2014

---

Residential Tenancy Branch