



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on July 25, 2014, to obtain a Monetary Order for the return of double their security deposit.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the Tenant.

The Landlord testified that he did not serve his evidence to the Tenant and the Residential Tenancy Branch (RTB) until January 11, 2015. Both evidence packages were sent via registered mail and the Landlord provided the tracking information in his oral testimony. The Tenant confirmed receipt of the Landlord's evidence as of January 13, 2015. At the time of this hearing the Landlord's evidence had not been received on the RTB file.

The RTB Rules of Procedure # 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. *In all events*, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing, not including the first and last days, (day of the hearing), as days are defined in the RTB Rules of Procedure.

The respondent Landlord's evidence was delivered to the RTB via Canada Post on December 13, 2014; however, this was not within the required timeframes set out above. The evidence had not been received on the RTB file at the time of the January 20, 2015, hearing.

Based on the above, I find the Landlord's evidence was not served in a manner that meets the requirements of the Rules of Procedure. Accordingly, I declined to consider the Landlord's documentary evidence if received on file after the hearing. I did however, consider the Landlord's oral testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

#### Background and Evidence

The undisputed evidence was that the Tenant entered into a written one year fixed term tenancy that began in 2013 and switched to a month to month tenancy. Rent of \$1,500.00 was payable on the first of each month and prior to the start of the tenancy the Tenant paid \$750.00 as the security deposit plus \$750.00 as the pet deposit.

The Tenant testified that she did not have a copy of her tenancy agreement with her at the time of this hearing and thought that her tenancy started sometime in March 2013. She stated that she always dealt with the Landlord's Agent, C.T. who resided in the building, and that she provided Agent with notice to end her tenancy. She submitted that she vacated the property at the end of February 2014 and that there was no move out condition inspection report completed at that time.

The Tenant argued that she served the Landlord with her forwarding address via registered mail on July 4, 2014 and she has not received the return of any of her pet or security deposit. She now seeks double her deposits.

The Landlord testified that C.T. was not his Agent and that C.T. only referred the Tenant to him. The Landlord was of the opinion that the tenancy began in April 2013 and that the Tenant did not vacate the unit until June 2014. The Landlord said he did not know if inspection report forms were completed because he could not remember.

The Landlord said he did not receive notice to end the tenancy from the Tenant and the Tenant did not return the keys to him until sometime in July 2014. Upon further clarification the Landlord stated that he picked up the keys from the building concierge desk in July 2014.

The Landlord confirmed that he had not returned the Tenant's pet or security deposits and argued that he had issues with the rental unit so he was going to keep the money. He stated that he did not have the Tenant's written permission to keep the deposits, he

had not made an application for Dispute Resolution to keep the deposits, and he did not have an Order granting him authority to keep the deposits.

In closing, the Tenant submitted that the Landlord had not been telling the truth about his Agent and argued that she has never met the Landlord and has never talked to him directly prior to this hearing. She stated that she dealt only with the Agent when signing the tenancy agreement, she gave the Agent her rent cheques, she served the Agent her notice to end tenancy, and she returned the rental unit keys to the Agent.

The Landlord stated that the rent cheques were made payable to him and he picked up the paperwork, payments, and keys from the concierge at the building where the rental unit was located. Upon further clarification the Landlord changed his testimony and confirmed that C.T. acted as his Agent dealing directly with the Tenant and it was the Agent who was the person who left the items with the concierge for the Landlord to pick up.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence was that C.T. was the Landlord's Agent and not the Landlord. Accordingly, I amended the style of cause to include the title (Agent) for C.T., pursuant to section 64(3)(c) of the Act.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with 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 tenancy ended sometime prior to June 2014 and as per the Canada Post tracking website the Landlord received the Tenant's forwarding address on July 7, 2015. Therefore, the Landlord was required to return the Tenant's pet and security deposit in full or file for dispute resolution no later than July 22, 2014. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that 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 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 double her pet and security deposits plus interest in the amount

of **\$3,000.00** (2 x \$750.00 + \$0.00 interest for pet deposit) + (2 x \$750.00 + \$0.00 interest for security deposit).

Conclusion

The Tenant has been awarded a Monetary Order for **\$3,000.00**. 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: January 21, 2015

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Residential Tenancy Branch

