



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The landlord did not attend this hearing, although I waited until 1355 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with the dispute resolution package on 7 November 2014 by registered mail. The tenant provided me with a photocopy of the mailing that showed the same. The envelope indicates that the item was returned to sender because the mailing was not retrieved by the landlord. The tenant testified that she served the landlord at the address at which he resides. The tenant knew that the landlord resides at that address because the tenancy concerned a rental unit located on the lower level of the residential property. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Preliminary Issue – Prior Hearing

It came to light at the hearing that this tenancy was the subject of an early cross application.

The tenant stated that she did not have the prior decision, which is somewhat perplexing given that the tenant applied for review consideration of that decision on 28 August 2014.

In any event, I read the relevant portions of that decision. The prior arbitrator found, in part, as follows:

*There was dispute as to the rental amount; the tenant said it was \$550 a month and the landlord said it was \$525. The tenancy agreement provided in evidence states it is \$525 payable on the 30<sup>th</sup> of each month (the landlord said it was payable the last day of the month which sometimes was the 31<sup>st</sup>). When served the 10 day Notice to End Tenancy for unpaid rent, the tenant agreed that she had not paid the balance of \$200 for June 2014. The landlord testified that she paid the \$200 on June 27, 2014, then paid \$500 rent for July by July 28, 2014 and has paid \$250 of the rent owed for August.*

...

*I find the landlord also entitled to a monetary order for \$250 for the balance of August rent.*

...

*Calculation of Monetary Award:*

<i>August 2014 balance of rent</i>	<i>250.00</i>
<i>Filing fee</i>	<i>50.00</i>
<i>Less security deposit (no interest 2009-14)</i>	<i>-260.00</i>
<i>Monetary Order to Landlord</i>	<i>40.00</i>

The prior decision purports to dispose with the security deposit.

I informed the tenant that she would have to deal with this issue at the hearing today in order to be successful with her current application.

#### Preliminary Issue – Request to Send in Evidence After Hearing

The tenant submitted that she has evidence that she paid all of August's rent at some point after 11 August 2014, the date of the prior decision. The tenant stated that she has evidence of a money order that sets out that she paid the amount on 22 August 2014.

The tenant had not submitted this as evidence. The tenant asked that I accept the money order as evidence after the conclusion of this hearing.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. The Rule provides that I must give both parties an opportunity to be heard on the question of admitting such evidence. As the landlord was not in attendance, I could not give the

landlord an opportunity to be heard. Accordingly, I cannot satisfy the procedural requirements of Rule 3.19 and refused to direct evidence be accepted after the conclusion of the hearing.

I informed the tenant that I would not be accepting evidence after the hearing.

#### Preliminary Issue – Tenant's Request to Withdraw Application

I explained to the tenant at the hearing that her options were to either withdraw her claim and refile or proceed on the basis that the money order from 22 August 2014 would not be in evidence.

The tenant requested that she be allowed to withdraw her application.

As there is no undue prejudice to the landlord in doing so, I allowed the request.

I explained to the tenant that in withdrawing her request she was at liberty to reapply for the relief she sought today; however, I cautioned the tenant that there was no guarantee that her claim would be allowed at the later hearing with or without the additional evidence.

#### Conclusion

The tenant's application is withdrawn. The tenant has leave to reapply should she choose to do so. Leave to reapply is not an extension of any applicable timeline.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 06, 2015

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Residential Tenancy Branch

