



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The respondent was represented by counsel. The respondent's daughter assisted with translation when necessary. Neither party elected to call witnesses.

The respondent did not raise any issue with service of the tenant's documents. The tenant testified that he did not receive the respondent's evidence at least seven days before the hearing date; however, the tenant stated that it was his preference that the hearing go ahead as scheduled and consented to me considering the respondent's evidence.

### Preliminary Issue – Is the Respondent a Proper Party to This Application

The tenant submits that respondent is the landlord's property manager and is responsible for return of the tenant's security deposit and penalty. The respondent submits that the tenant is likely owed compensation for his security deposit, but these amounts are not owed by her.

### Issue

Is the respondent a proper party to this application?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects are set out below.

This tenancy began 15 November 2013 and ended 31 October 2014. Monthly rent of \$5,500.00 was due on the first. The landlord collected a security deposit in the amount of \$2,750.00 on 2 November 2013.

I was provided with a copy of the tenancy agreement dated 2 November 2013. The tenancy agreement is between the landlord AR and the tenant. There is an address for service on the tenancy agreement. Neither the tenant nor the respondent knows whose address this is.

The tenant testified that he delivered his security deposit by electronic mail to the landlord's agent TK. The tenant testified that TK was the person that showed him the rental unit. The tenant testified that he understood that the amount of his security deposit was being given to TK to compensate for TK's services as the landlord's agent. The respondent testified that she does not know TK. The respondent testified that she is not and has never been in receipt of the tenant's security deposit.

The tenant could not recall to whom his rent cheques were issued, but did not deny that they were issued in the landlord's name. The tenant testified that he would leave his cheques in an envelope with the concierge and the respondent would pick them up.

The tenant provided me with an email dated 4 December 2013. In that email, YB responds to the tenant's inquiries by referring him to the respondent. The tenant admitted that before the email of 4 December 2013 he had no knowledge of the respondent's relationship with the landlord. The tenant testified that he did not understand "landlord's agent" in the context of this email to refer to a real estate agent.

On 17 December 2013, the respondent forwarded a notice from the strata to the tenant regarding window repairs.

The tenant admits receiving the respondent's email of 22 October 2014 wherein she denies acting for the landlord as a property manager.

The tenant testified that he did not have contact information for the landlord and he was never provided any by the respondent. The tenant admits that he did not contact the concierge of the building to ask for the landlord's contact information or try to contact his landlord. The respondent testified that the tenant never asked her for the landlord's contact information. The respondent testified that she has had difficulty contacting the landlord AR and his spouse as they are in the process of ending their marriage.

The respondent testified that she did not ever receive remuneration for her actions in respect of this tenancy. The respondent testified that she acted for both buyer and seller in the purchase of the rental unit. The respondent testified that the landlord's wife is her friend. The respondent testified that any actions she took on the landlord's behalf were as a favour and not for remuneration. The respondent testified that she picked up cheques from the concierge and deposited the cheques in the landlord's bank account. The respondent testified that she had a conversation with the tenant about rent cheques for the upcoming year. The respondent testified that escorted a repair person to the rental unit for the purposes of addressing deficiencies on behalf of the landlord.

I was provided with a title transfer document setting out that the landlord AR and his spouse received title to the rental unit on 27 March 2013. I was provided with a title transfer document setting out that the landlord AR and his spouse transferred title to the rental unit on 20 May 2015. I was provided with a title search dated 10 August 2015 for the rental unit. The rental unit was owned by the landlord AR and his spouse as joint tenants until 26 May 2015.

### Analysis

Throughout the testimony of both parties, they seemed to conflate "agent" and "property manager". There is no definition of "property manager" in the Act. The language "property manager" is not used anywhere in the Act. The Act does use "agent". An agent is a person authorized by another to act for or in the place of him or her. I make no determination as to whether or not the respondent was acting as a property manager as that is beyond the scope of this application.

On the basis of the evidence provided to me by the parties, I find that the respondent did not receive remuneration from the owner of the rental unit. Notwithstanding the fact that the respondent did not receive any form of remuneration from the owner of the rental unit, I find that the respondent acted as agent for the owner. In this case, the respondent acted in several ways that lead me to conclude that she was acting as agent for the landlord:

- The respondent collected cheques written by the tenant to the owner.
- The respondent deposited rent cheques to the owner and deposited the cheques in the owners account.
- The respondent escorted a service provider to the rental unit to conduct repairs.
- The respondent communicated with the tenant as to deficiencies in the rental unit.
- The respondent provided information to the tenant about repairs to the rental unit from the strata.

Section 38 of the Act sets out relevant rules dealing with security deposits:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...
- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable...

[emphasis added]

The wording of these provisions sets out that a landlord must “repay” or “claim against”. This language indicates that it is the possessor of the security deposit that must remit it to the tenant or apply to keep it. I understand this to mean that a proper claimant for return of a security deposit is the party that holds it.

I find on the basis of the evidence provided to me that the respondent does not hold the tenant’s security deposit and cannot be held responsible for its return. The proper named party to this matter is the landlord AR.

### Conclusion

The tenant’s application as against the respondent is dismissed. The tenant may reapply for dispute resolution against the landlord AR.

The tenant may wish to review sections 38, 29 and 88 of the Act.

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: August 21, 2015

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Residential Tenancy Branch

