



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order which includes an order for the return of double his security deposit. The landlord did not participate in the conference call hearing. The tenant presented evidence that he served the landlord via registered mail sent to the address for service she listed on the tenancy agreement, to an address which she provided him via email in January 2014 which is also the address on title for the residential property at the Land Title Office and to her new place of employment in another province. The first letter was returned unclaimed, the second letter was returned as having been refused by the recipient and the third letter was signed for by another employee at the company. I determined pursuant to section 71(2)(c) that the landlord had been adequately served for the purposes of the Act and the hearing proceeded in her absence.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The tenant's undisputed evidence is as follows. The tenancy began on February 15, 2014 and rent was set at \$1,900.00 per month, payable in advance on the 15<sup>th</sup> day of each month. The tenant paid a \$950.00 security deposit at the outset of the tenancy. The tenancy was set to run for a fixed term of one year, ending on February 15, 2015 and the tenant paid rent faithfully throughout the tenancy.

The tenant moved most of his belongings from the unit on January 9, 2015 and he left a few items in the garage which were retrieved on February 3, 2015. The landlord sent the tenant an email in January advising that new tenants would be occupying the unit as of February 1, 2015.

The tenant seeks to recover \$975.00 in rent for the period from February 1 - 15, 2015, arguing that the landlord did not have a right to retain that rent as she had collected rent from the new occupants and given them possession of the unit during a period in which he was entitled to exclusive possession.

The tenant provided his forwarding address in writing to the landlord on March 11, 2015 by registered letter to an address which the landlord had provided to him. This letter was returned to sender as unclaimed. He also sent the address via registered mail to the address for service listed on the tenancy agreement. This letter was returned as having been refused by the recipient. He also provided the address by text on January 7, 2015 and by email on January 31, and February 6, 2015. The landlord responded to the February 6 email.

On February 4, the landlord sent the tenant an Interac e-transfer for \$495.89 which represented a partial repayment of his security deposit.

The tenant seeks to recover \$400.00 of the \$454.11 which was withheld from the deposit as he acknowledged that he had authorized the landlord to retain \$54.11 in compensation for a garage door remove control which had been lost. He also seeks an award equivalent to the full security deposit as the landlord did not return the full deposit or file a claim against it within 15 days of the end of the tenancy and the date she had received his forwarding address.

The tenant also seeks to recover the \$50.00 filing fee paid to bring his application.

### Analysis

I accept the tenant's undisputed testimony. Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenant paid a \$950.00 security deposit and fully vacated the rental unit on February 3, 2015 and that the landlord received the forwarding address in writing on February 6, the date the tenant sent the email to which the landlord replied. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenant double the security deposit. I therefore award the tenant \$1,350.00 which represents the \$400.00 the landlord wrongfully withheld and the penalty amount of \$950.00.

There is no evidence before me showing that the tenant authorized the landlord to re-rent the unit prior to the expiry of the fixed term, which was set to end on February 15, 2015. I find that the tenant kept his belongings at the residential property until February 3, 2015 and is entitled to recover the rent paid for the period from February 4 - 15. At a daily rate of \$63.33 per day ( $\$950 \div 15$ ), I find the tenant is entitled to recover \$759.96 and I award him that sum.

As the tenant has been substantially successful in his claim, I find he should recover the \$50.00 filing fee and I award him \$50.00 for a total award of \$2,159.96. I grant the tenant a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenant is granted a monetary order for \$2,159.96.

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 01, 2015

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Residential Tenancy Branch

