



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EWALD RENTALS  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPN MNR MNSD FF  
                             MNSD FF

### Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on July 11, 2015 seeking an Order of Possession based on the Tenant's notice to end tenancy and a Monetary Order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of his filing fee from the Tenant.

The Tenant filed on July 22, 2015 seeking an Order for the return of double her security deposit and to recover the cost of the filing fee for her application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. 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.

On October 8, 2015 the Landlord submitted 2 pages of evidence to the Residential Tenancy Branch (RTB). On October 16, 2015 the Landlord submitted one page consisting of Canada Post Receipts to the RTB. The Landlord affirmed that she did not serve the Tenant with copies of her evidence documents.

On July 22, 2015 the Tenant submitted 5 pages of evidence to the RTB. The Tenant affirmed that she did not serve the Landlord with copies of her evidence documents.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and **must be given to the other party and to the Residential Tenancy Branch** before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.* [My emphasis added with bold text]

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.15 provides 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 [my emphasis added by underlining and bold text].

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as neither party served their evidence upon the other, I declined to consider the documentary evidence submitted by the Landlord and the Tenant. I did however consider each person's oral testimony.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord proven entitlement to monetary compensation?
3. Has the Tenant proven entitlement to the return of double her security deposit?

#### Background and Evidence

The parties entered into a written fixed term tenancy agreement that stated that the tenancy began on March 1, 2014 and switched to a month to month tenancy after one year. Rent of \$1,465.00 plus \$30.00 parking was payable on the first of each month. On February 27, 2014 the Tenant paid \$750.00 as the security deposit. A move in inspection was conducted on March 2, 2014 and both parties signed the condition inspection form.

On May 28, 2015 the Tenant served the Landlord notice to end her tenancy effective June 30, 2015. The Tenant served the Landlord with her forwarding address in writing on July 1, 2015.

The Landlord testified that they advertised the rental unit on the internet right after they received the Tenant's notice to end her tenancy. She alleged that one week before the end of June the Tenant told them that she would not be able to move out on time because of something to do with her moving company. The Landlord asserted that they were not able to re-rent the unit right away because they were not certain when the Tenant would vacate the unit.

The Landlord submitted that they showed the unit to only one person during the month of June 2015. That person liked the unit and had asked if she could occupy the unit early, prior to June 30, 2015. The Landlord argued that they were not able to provide the unit early so that person was no longer interested. She confirmed that she did not have a signed tenancy agreement with a prospective tenant. The Landlord stated that they were not able to re-rent the unit until July 20, 2015 so they are seeking to recover 2/3 of the monthly rent for loss of rent for July 2015.

The Landlord testified that they did not serve the Tenant with notice of two opportunities for inspection and did not serve her with a final notice of inspection. She stated that they normally serve their tenants with a document that outlines the requirements for cleaning which states that tenants have to vacate by 1:00 p.m. The document also states that the tenants need to contact the Landlords when they are ready for their inspection. The Landlord asserted that the Tenant did not contact them until the morning of July 1, 2015 at which time they scheduled the inspection for 2:00 p.m. that same day. The Landlord stated that when she attended the move out inspection the Tenant refused to sign the condition form.

The Tenant testified that she had completely vacated the rental unit on June 30, 2015. She stated that she had scheduled her movers a month in advance and at no time during the month of June did she tell the Landlord that her movers would be delayed. She submitted that she had scheduled the movers to arrive at 11:00 a.m.; however, they were one hour late and did not arrive until noon. They were finished packing up by 1:30 and the Tenant finished the cleaning by 2:00 p.m.

The Tenant stated the Landlord was at her rental unit when the movers arrived on June 30, 2015 so she knew that the Tenant was moving out that day. She argued that she had called the Landlords several times and left several messages trying to have the Landlords attend the unit to conduct the inspection. She said she waited at the unit until 2:30 p.m. and had to leave to let the movers into her new place.

The Tenant submitted that she continued to try and get in touch with the Landlords calling both their telephone numbers during the evening of June 30, 2015. When they failed to return her calls she tried again at 9:00 a.m. on July 1, 2015 which is when she finally reached the male Landlord. She said he told her that he was busy and would call her back. The Tenant stated that the male Landlord also told her to come to the inspection alone.

The Tenant testified that the female Landlord called her at 12:00 p.m. and said she had already done the inspection and requested that the Tenant get to the rental unit right away. The Tenant stated that the male Landlord's comment concerned her so she brought her adult daughter and a friend with her to the unit. When they arrived at the unit the Tenant said the female Landlord told her that the male Landlord had conducted the inspection on the evening of June 30, 2015. The Tenant asked why she was not informed of that inspection as she would have attended the unit.

The Tenant asserted that the Landlord did not have the move out condition form with her during the July 1, 2015 inspection. She said that she had brought her move-in form with her and requested the Landlord signed it. She said the Landlord refused to date the document.

The Tenant argued that she followed the correct procedures in ending her tenancy and should have had her deposit returned to her. She asserted that the Landlords manipulated her which delayed her returning the keys until July 1, 2015. She stated the female Landlord became confrontational during the move out inspection and told her that they refused to return the deposit.

The Landlord refuted the Tenant's submission and claimed that she had brought the condition form with her and it was the Tenant who refused to sign it. The Landlord confirmed that her husband had conducted an inspection on June 30, 2015. The Landlord also confirmed that she had been at the rental unit on June 30, 2015 when the Tenant's movers arrived.

The Landlord stated that she conducted the inspection on July 1, 2015 and she found that the Tenant had left a couple of boxes in the rental unit. Upon further clarification the Landlord stated that the Tenant had left boxes in the living room, kitchen, around the unit, and also left some cleaning stuff. The Landlord argued that the Tenant had brought two people to the unit on July 1, 2015 to assist her in moving the additional items.

The Tenant denied leaving boxes in the rental unit until July 1, 2015. She argued that she had paid a mover to move all of her possessions so why would she leave anything behind. She asserted that she was completely moved out of the unit and ready for the inspection by 2:30 p.m. on June 30, 2015.

### Analysis

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

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

### **Landlord's Application**

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 17(3) of the Regulations provides that when providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

This tenancy began as a fixed term which expired on February 28, 2015 and converted to a month to month or periodic tenancy. The undisputed evidence was the Tenant served the Landlords her notice to end tenancy on May 28, 2015 ending her tenancy effective June 30, 2015. As per the foregoing, I find the Tenant ended her tenancy in accordance with section 45(1) of the *Act*.

I favored the Tenant's evidence over the Landlord's with respect to what transpired on June 30, 2015. I favored the Tenant's evidence because it was forthright, consistent, and credible. The Landlord confirmed that she was present on June 30, 2015 when the Tenant's movers arrived so she knew the Tenant was moving out that day and yet both Landlords failed to return the Tenant's calls or attend the unit to conduct the inspection while the Tenant was still there.

In addition, the Landlord confirmed that her husband conducted the move out inspection on the evening of June 30, 2015, in absence of the Tenant; which I find supports the Tenant's submissions that she had completely vacated the unit and had left several messages for the Landlords on June 30, 2015 to try and arrange the move out that day. I find the Landlord's submission that the Tenant had left possessions in the unit until July 1, 2015 to be highly improbably given the circumstances presented to me during the hearing. Rather, I accept the Tenant's submission that she had paid a mover to move all of her possessions and would not have left several boxes behind.

Based on the above, I find the Tenant acted in accordance with the *Act* and vacated the property as of June 30, 2015. I further find that the Landlord regained possession on June 30, 2015 when they entered and conducted the inspection in absence of the Tenant. In addition, I conclude the delay in returning the keys to the Landlord was due to the Landlords' failure to be available to the Tenant and not the reverse. Accordingly, I

find the Landlord's provided insufficient evidence to prove the Tenant over held the unit until July 1, 2015.

The Landlord made application for an Order of Possession based on a tenant's notice to end tenancy. As indicated above, I found the Landlord regained possession of the rental unit on June 30, 2015 when they conducted the inspection. Therefore, the Landlord's request for an Order of Possession is dismissed, as they already had possession of the unit at the time they filed their application for Dispute Resolution.

In regards to the Landlord's claim to recover 2/3 of the July rent, I find the Landlord submitted insufficient evidence to prove the Tenant breached the *Act* or that the Landlord lost a prospective tenant due to a breach by the Tenant. By her own submission the Landlord stated that they only showed the unit to one prospective tenant who lost interest in the unit when she found out she could not move in early. The Tenant had paid her rent in full for June and ended the tenancy in accordance with section 45 of the *Act*. Therefore, there was no requirement for the Tenant to vacate early. As such, the Tenant did not cause the Landlord to lose a prospective tenant. Accordingly, I dismiss the Landlord's claim for unpaid rent or loss of rent, without leave to reapply.

The Landlord had applied to retain the Tenant's security deposit to offset against the amounts claimed above. As I have dismissed the Landlord's claim for unpaid or loss of rent in its entirety, the Landlord has no legal right to retain the Tenant's deposit and must return the deposit to the Tenant forthwith.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee, pursuant to section 72(1) of the Act.

### **Tenant's Application**

Section 36(2) of the RTA stipulates that a landlord's right to claim against a security and pet deposit **for damages** is extinguished if they do not schedule a move out condition inspection with the tenant. [My emphasis added with bold text]

Section 38 of the Act provides a landlord with two options on how to deal with the disbursement of security deposits: (1) the landlord must file an application for Dispute Resolution to make a claim against the deposit or (2) the landlord must return the deposit to the tenant.

The undisputed evidence was the Landlord did not complete a condition inspection report form at move out and as such their right to claim **damages** against the security deposit has been extinguished, pursuant to section 36 of the *Act*. In this case the

Landlord's application was filed for monetary compensation for unpaid rent and not damages. Therefore, I find the extinguishment provision does not apply here.

The evidence before me supports that the tenancy ended June 30, 2015 and the Landlord was provided the Tenant's forwarding address on July 1, 2015. The Landlord filed their application for dispute resolution on July 11, 2015.

Based on the above, I find that the Landlord complied with Section 38(1) of the *Act*, filing their application within the required 15 day period. Therefore, the Landlord is not 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.

I conclude the Tenant is not entitled to the return of double her security deposit. Rather, she is entitled to the return of her the actual deposit amount of \$750.00 plus \$0.00 interest.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of her **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

### Conclusion

The Landlord's application was dismissed in its entirety. The Tenant was successful in proving entitlement to the return of her security deposit plus her filing fee in the amount of \$800.00 (\$750.00 + \$50.00).

The Tenant has been issued a Monetary Order for **\$800.00**. 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 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 12, 2016

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Residential Tenancy Branch

