



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, OLC, FF

### Introduction

This hearing dealt with an 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;
- an order requiring the respondent to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover her filing fee for this application from the respondent 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 applicant and respondent admitted service of the respondent's evidence and the dispute resolution package respectively.

### Amendment to the Application

The applicant asked to amend her application to remove AF and add the respondent as a party. The respondent consented to this amendment. On the basis of the respondent's consent to the amendment, the request is granted. This amendment is reflected in the style of cause to this decision.

At the hearing, the applicant informed me that the landlord LS returned the applicant's security deposit on or about 11 December 2015. The applicant asked to amend her application to reflect that she is only seeking compensation pursuant to subsection 38(6) of the Act and recovery of her filing fee.

### Issue(s) to be Decided

Is the applicant entitled to a monetary award equivalent to the amount of her pet damage and security deposits as a result of the respondent's failure to comply with the provisions of section 38 of the Act? Is the applicant entitled to recover the filing fee for this application from the respondent?

### 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 of the claim and my findings around it are set out below.

The tenancy began 27 March 2010 and ended 29 October 2015. The tenancy agreement was between the applicant and LS, the former owner of the rental unit. The applicant paid her rent to LS. LS collected a security deposit in the amount of \$575.00 at the beginning of the tenancy.

In early September, the respondent made an offer to purchase the rental unit from LS. Subjects were removed in middle or late September.

The applicant testified that LS provided notice to end the tenancy in September 2015. The applicant was told that she would be required to vacate the rental unit on or before 30 November 2015. The applicant testified that LS stated that return of the security deposit would be the respondent's responsibility.

The applicant testified that she was able to find a new residence that was available earlier and provided notice to vacate at the end of October 2015.

The applicant received compensation equivalent to one month's rent from the respondent's realtor TN. The respondent testified that he provided this amount because he was securing possession earlier and LS did not wish to incur this expense.

On 29 October 2015 the applicant conducted a condition inspection. LS's mother (BS) and LS's real estate agent (JL) attended the inspection. The applicant provided her forwarding address to JL.

Ownership of the rental unit transferred from LS to the respondent on 30 October 2015. The respondent received the keys from his realtor and found the rental unit empty. The respondent testified that he has not received the applicant's forwarding address. The respondent testified that the amount of the security deposit was not accounted for in the statement of adjustments.

The entire security deposit was returned to the applicant on or about 11 December 2015 by way of electronic transfer by LS. The applicant testified that LS said she had believed that the lawyers were handling return of the security deposit.

### Submissions

The applicant submits that the obligation to return the security deposit passed with the transfer of the rental unit to the respondent notwithstanding that at no time did the tenancy and the respondent's ownership of the rental unit overlap.

The respondent submits that he owed no obligation to the applicant in respect of the security deposit.

### Analysis

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...

[emphasis added]

As can be seen from subsection 38(1) of the Act, it is the responsibility of a “landlord” to “repay” a tenant’s security deposit.

Section 1 of the Act defines landlord:

“landlord”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Pursuant to section 93 of the Act, the obligations of a landlord with respect to a security deposit or a pet damage deposit run with the land or reversion.

The only time the respondent carried out any duties associated with being a landlord was when he paid the applicant's compensation under the 2 Month Notice. I find that this tie is insufficient to cause the respondent to be a “landlord” within the meaning of the Act. The tenancy had ended prior to the respondent taking ownership of the rental unit. Accordingly, the obligations

could not pass with the land as an obligation of the landlord as there was nothing to transfer. Further, the respondent at no time received transfer of the security deposit from the landlord LS—in fact, LS was the party that eventually returned the security deposit.

For these reason, the respondent is not liable to the applicant for compensation payable pursuant to subsection 38(6) of the Act. The application is dismissed.

As the applicant has not been successful, she is not entitled to recover the filing fee paid from the respondent.

### Conclusion

The application is dismissed.

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: July 25, 2016

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Residential Tenancy Branch