



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Seven Estates Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This is an application brought by a tenant requesting an order for return of \$137.50 of her security deposit and a request for recovery of the \$50.00 filing fee.

The applicant testified that the respondent(s) were served with notice of the hearing by registered mail that was mailed on December 31, 2015; however the respondent(s) did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent(s) have been properly served with notice of the hearing, and I therefore conducted the hearing in the respondent's absence.

The testimony was taken under affirmation.

### Issue(s) to be Decided

The issue is whether or not the applicant has the right to an order for return of \$137.50 of her security deposit and recovery of her filing fee.

### Background and Evidence

This tenancy began on July 15, 2013 and the applicant was a co-tenant in this tenancy, with a total of two tenants listed on the agreement.

The co-tenants paid a combined security deposit of \$875.00 on June 24, 2013.

On September 30, 2015 the applicant/tenant gave her notice that just she would vacate the rental unit at the end of October 2015, and that her co-tenant would be staying, and she therefore requested that her name be removed from the tenancy agreement.

The applicant/tenant also sent the landlord a forwarding address in writing, dated October 27, 2015, requesting that her 1/2 of the security deposit be forwarded to her new address.

The landlord responded to the tenants request for return of the security deposit stating that, since the tenancy had not fully ended, the applicant/tenant would have to deal with her co-tenant, to gain the return of her security deposit from her.

The applicant/tenant subsequently received \$300.00 of the security deposit from her co-tenant; however the applicant/tenant is requesting an order that the landlord return the remaining \$137.50.

### Analysis

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

What this means however is, unless the tenancy is completely ended and a new tenancy is formed, the landlord is not required to return any of the security deposit to either of the co-tenants, because section 38 of the Residential Tenancy Act allows the landlord to retain the security deposit until the tenancy ends

Section 38 of the Residential Tenancy Act states:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the **date the tenancy ends (*my emphasis*)**, 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.

Therefore if one tenant vacates before the tenancy ends, it would be between the co-tenants to sort out the security deposit between them.

In this case the applicant/tenant did not give notice to end the tenancy completely; she simply requested that her name be removed from the tenancy. The applicant tenant has provided no evidence to show that a new tenancy agreement was ever signed for this rental unit, and therefore this tenancy continues and the landlord has the right to retain the full security deposit until the tenancy has officially ended.

I therefore will not allow the applicants request for an order for the landlord to return \$137.50 of her security deposit, or recovery of her filing fee.

### Conclusion

The application for return of \$137.50 of the security deposit is dismissed in full, with leave to reapply when and if this tenancy officially ends.

The application for recovery of the filing fee is dismissed without leave to reapply.

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: August 04, 2016

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Residential Tenancy Branch

