



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, O, OLC, FF

### Introduction

The purported tenants and the personal representative of the late Ms. F.S. apply to recovery a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”) and for recovery of an alleged overpayment of utilities and firewood charges.

The landlord has filed material to indicate she wished to make her own claim for recovery of unpaid rent and for the cost of firewood. She has not brought her own application for dispute resolution, however, Mr. G.S. on behalf of the applicants consented to those two claims being heard with this proceeding.

The parties attending the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Are the tenants entitled to recover the security deposit or double the deposit? Have the tenants overpaid for utilities or firewood? Is the landlord owed rent for money for firewood?

### Background and Evidence

The rental unit is a three bedroom, two bathroom home.

There is no written tenancy agreement. The terms of the landlord/tenant relationship are in dispute. Some terms have been agreed to. It is agreed that the relationship of

landlord and tenant was forged between the landlord and the late Ms. F.S. prior to November 2015. Ms. F.S. was looking for place to house her teenage granddaughter Ms. T.S. and her teenaged boyfriend, the applicant Mr. T.P.

It was agreed that Ms. F.S. would rent the home starting November 1, 2015 and monthly rent of \$1600.00, due on the first of each month. The landlord received an \$800.00 security deposit.

It was agreed that the landlord would reserve to herself the bedroom and *en suite* bath located on the upper floor of the home. The landlord did not live there and, it appears, did not contemplated living in the home. She intended to use the upper room for work related to her business.

Ms. F.S. never lived there. She passed away in April 2016. Her son, the applicant Mr. G.S. is the executor named in the will. Probate of the will was granted to him in November 2016.

Shortly after the start of the tenancy, if not concurrent with its start, the landlord's teenage son K. moved into the home and began occupying the upper bedroom.

K. was an acquaintance of T.S. and T.P. The landlord says that he moved in at the request of T.S. and T.P., without her consent and against her wishes. She says T.S. told her that she and T.P. needed someone who had a valid driver's license to drive them around. Ms. T.S. testified that she thought K. moved in with the landlord's consent.

K. moved back to live with his mother, the landlord, at an unspecified date prior to May 4 2016.

The late Ms. F.S. paid rent directly to the landlord until just prior to her death. She paid \$1600.00 for November 2015 but then only \$1400.00 for December. She paid \$1500.00 for January, February and March 2016 but only \$1400.00 for April.

It would appear that the landlord received \$1400.00 and then another \$100.00 for May rent. Her own email dated May 4 shows she received a total of \$1500.00 for that month, though she claims that only \$1400.00 was sent.

Mr. G.S. gave notice on behalf of the tenants to end the tenancy May 31, 2016.

A forwarding address was provided by him with the notice. The landlord has not repaid the deposit or made a formal application to keep it.

### Analysis

The landlord has put herself in a very difficult position by failing to prepare and execute a written tenancy agreement as she is required to do by the *Act*. As well, the other party to the verbal agreement has passed away. Clear and cogent evidence is required in order to attribute oral statements or verbal agreements to the deceased Ms. F.S.

I find that the tenancy agreement was between the landlord Ms. S.M. and the late Ms. F.S. She was the tenant, whether she resided in the rental unit or not. She paid the rent. No contractual dealings occurred between the landlord and Ms. F.S.'s granddaughter or her boyfriend prior to them taking up residence. There is no suggestion that Ms. F.S. was acting as their agent in negotiating the tenancy.

I consider it most likely that the landlord's son K. moved into the home at the behest of the occupants T.S. and T.P. Perhaps it was his suggestion, but it was with their agreement and consent. Had it been otherwise it would be very likely that discussions and negotiations in the form of texts or emails would have ensued between the participants about the nature of K. relationship in the home. There is no evidence of any such communication.

The rent was \$1600.00. I do not agree with Mr. G.S. that the rent ever changed. The evidence shows that the landlord complained about the tenant Ms. F.S. paying less than \$1600.00. The landlord's email of May 4, 2016 states that she would accept \$1500.00 for May rent and forgive the balance of \$100.00. That email indicates to me that the landlord considered the rent to be \$1600.00 and forgave the \$100.00 shortfall for the month of May only.

The landlord is owed \$700.00 for unpaid rent.

Mr. G.S. agreed at hearing that it had been agreed the landlord was owed \$1000.00 for the firewood used over the duration of this tenancy. I award the landlord \$1000.00 as claimed.

Having regard to the findings above, the tenant Ms. F.S. continued to be responsible for the BC Hydro costs for the home, in full, as was the original agreement, despite Mr. K. taking up residence there. Mr. G.S. has failed to show that the amount charged by the utility provider was excessive. I dismiss this item of the claim.

Mr. G.S. on behalf of the estate, is entitled to recover double the \$800.00 security deposit. Section 38 of the *Act*, provides that once a tenancy has ended and once the landlord has been given a forwarding address in writing for the tenant, she must, within fifteen days, either repay the deposit money or make an application for dispute resolution to keep all or a portion of it. If she fails to do so she is accountable for an amount double the deposit.

The landlord has failed to comply with s. 38 and must bear the penalty, totalling \$1600.00.

In result, the landlord is entitled to a monetary award of \$1700.00.

Mr. G.S. in his capacity as executor of the estate of T.S., deceased, is entitled to a monetary award of \$1600.00. I award him recovery of the \$100.00 filing fee for this application, for a total award of \$1700.00.

### Conclusion

Each side is entitled to a monetary award of \$1700.00. The awards offset each other, leaving no balance due to either.

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: December 23, 2016

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Residential Tenancy Branch