



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NORTHVIEW REIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      mnsd, ff

### Introduction

The tenant applies for the return of the tenant's security deposit and pet damage deposit.

Both parties attended the hearing and made submissions. There are no issues regarding service of documents.

### Issue(s) to be Decided

The issue in this case is whether the tenant is entitled to the return of the deposits, and whether the doubling provisions apply.

### Background and Evidence

This tenancy began on or about September 15, 2015 and ended on March 31, 2016. The tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00 totaling \$750.00. A cheque was cut by the landlord for this sum after the tenancy ended and the tenant's forwarding address was provided, but the cheque was never sent to the tenant. The cheque was made out jointly to the tenant as well as to his roommate. The landlord took the position that the cheque had to be issued in both names and refused to issue a cheque to the tenant only. When the tenant advised he would not accept a cheque in both names, the landlord then simply held the cheque and never sent it to the tenant or to his roommate. The tenant's roommate no longer lives with the tenant, and does not want to be involved in any way.

The original written tenancy agreement made September 14, 2015 includes the following provisions:

- In clause 1, the tenant is named a party to the agreement, but the roommate is not. The tenant signed the agreement, but not the roommate.
- The roommate is not listed as an occupant in clause 2.
- Clause 13 provides that only those persons listed in clauses 1 and 2 may occupy the rental unit, and that the tenant must apply in writing for approval from the landlord for a person to become an authorized occupant.

A Leaseholder Addendum was executed on October 6, 2015 by the tenant, his roommate, and the landlord. That document included the following provisions:

- The name of the roommate was requested to be added to the rental agreement for occupancy of the subject premises;
- The person being added to the rental agreement agreed to take full responsibility for the condition of the suite, and to abide by, and be held responsible for all clauses and conditions of the existing rental agreement.
- The Addendum was not a Lease Assignment or Sub-let.
- This document was to become effective only when signed by all affected residents (i.e. on October 6, 2015).

### Analysis

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). There is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply in this case. There is no evidence that any statutory grounds extinguish the tenant's right to claim the deposits. The claim against the deposit was ever filed by the landlord.

The deposit was never returned to the tenant following the tenancy. The cheque cut by the landlord still remains with the landlord. The critical issue in this case is whether it was appropriate for the landlord to insist upon having the names of both the tenant and his former roommate as payees on the cheque.

The landlord's position appears to be that the roommate became a co-tenant when he signed the Leaseholder Addendum, and that the return of the deposits must be paid jointly to all co-tenants. The documents in this case do not support that position with any degree of certainty. It is perhaps arguable that the Leasehold Addendum in some respects could be understood as adding the roommate as a tenant, as it states that the new resident will abide by, and be held responsible for all clauses and conditions of the existing rental agreement. On the other hand the agreement is more clearly understood as being an authorization for the resident to live as an occupant (but not a tenant) in the premises. The tenancy agreement clearly permits this to occur, as clause 13 of the tenancy Agreement specifically contemplates that a tenant can have another occupant in the premises who is not a tenant, provided written authorization is given by the landlord. Although somewhat confusing written, the Leasehold Addendum is best understood as such an authorization. The wording specifically states that the new [person is added for occupancy (not for tenancy). The added person is referred to as a resident, but not as a tenant. The document does not require that the added person also become a signatory to the tenancy agreement, only that they receive a copy of the tenancy agreement. The document makes it clear that the tenancy agreement is not being assigned or sub-let. Based upon these factors, I find that in this tenancy, the roommate became an authorized resident when he and the landlord signed the

Leasehold Addendum, but he at no time became a tenant. The roommate never paid a deposit to the landlord, and had no right to receive the deposit back from the landlord.

Accordingly, I find that the landlord breached their obligations under section 38 by failing to return the tenant's deposit to him as required, with only the tenant's name as payee.

The tenant's application seeks only the face value of the deposit paid (plus the filing fee), but the tenant has not specifically waived his right to the doubling provisions of section 38. Policy Guideline 17 provides that unless the tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit in cases where the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing. Under these circumstances, the landlord must now pay tenant double the deposits, which is \$1,500.00. As the tenant is successful, he is also entitled to recover his \$100.00 filing fee.

#### Conclusion

The tenant is entitled to double the deposits, plus his filing fee, for a total of \$1,600.00. A monetary order in this amount, payable by the landlord to the tenant, is issued.

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: February 02, 2017

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Residential Tenancy Branch