



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened by conference call concerning the Tenant's Application for Dispute Resolution (the "Application") for the return of double his security deposit.

The Tenant appeared for the hearing with an advocate who assisted him during the hearing. However, there was no appearance for the respondent Landlord named on the Application during the 45 minute hearing. Therefore, I turned my mind to the service of documents for this hearing and the Tenant's claim based on the undisputed evidence before me as detailed below.

### Background and Evidence

The Tenant testified that this tenancy with the Landlord named on the Application started on April 1, 2014 on a month to month basis. The monthly rent amount was \$375.00 payable on the first day of each month. The Tenant testified that while he did not sign a tenancy agreement for the one bedroom unit, he paid the Landlord a \$100.00 security deposit.

The Tenant provided a copy of the advertisement of the rental unit which the Landlord had signed to acknowledge receipt of the Tenant's security deposit. That document also contained the handwritten phone number of the Landlord which was consistent with the typed phone number within the advertisement. The document also detailed monthly rent for April 2014 of \$375.00 was paid.

The Tenant testified that he paid monthly rent to the Landlord who would attend the rental unit to collect the money. The Tenant testified that he was in possession of rent receipts for rent paid throughout this tenancy.

The Tenant testified that in April 2016, the Landlord informed him that he had to vacate the rental unit because the rental home had been sold. The Tenant explained that at that point he did not know his rights and the Landlord's obligation to give him proper

notice and/or compensation to end the tenancy. As a result, the Tenant moved out on May 30, 2016 in accordance with the Landlord's verbal instructions.

The Tenant testified that for the next nine months he attempted to call the Landlord on the number provided to get the return of his security deposit, but the Landlord did not take his calls.

The Tenant provided confusing testimony regarding the events that occurred after this point, but I was able to record the following event as provided to me.

The Tenant contacted the Residential Tenancy Branch who informed of the requirement for the Tenant to give the Landlord a forwarding address in writing. As a result, the Tenant was able to locate an address where the Landlord and his wife resided. This address is detailed on the front page of this Decision.

The Tenant testified that on March 23, 2017 he served the Landlord and his wife with his forwarding address by regular mail to the Landlord's address. The Tenant testified that in addition, he also served his forwarding address by regular mail to the owner of the rental home. The Tenant testified that he did this because he suspects the Landlord was collecting rent from the Tenant to give to the owner as the owner's agent. The Tenant provided no supporting evidence of this.

The Tenant explained that after he received no response from the Landlord or the owner of the rental unit, he filed the Application on June 2, 2017. However, the Tenant only named the Landlord on the Application but served this to the address where the owner resided. The Tenant provided the Canada Post tracking number into evidence to verify this service but confirmed the documents were returned back to the Tenant as unclaimed.

The Tenant testified that as a result, he then served the Application and the Hearing documents again by registered mail to the Owner and also this time to the Landlord at the address on the front page of this Decision. The Tenant did not provide a Canada Post tracking number for the package sent to the owner but did provide the Canada Post tracking number for the package sent to the Landlord and his wife. That Canada Post tracking number is detailed on the front page of this Decision and shows the female Landlord, who it was also addressed to, signed and received for the documents on October 3, 2017.

The Tenant claims the return of his security deposit and requests it to be doubled in the amount of \$200.00 for the failure of the Landlord to return it to him.

I also note the owner of the rental unit provided one page of evidence for this hearing. The Tenant and his advocate confirmed that they had not been served anything by the owner or the Landlord for this hearing. Therefore, I am unable to consider this evidence in my findings as it is inadmissible.

#### Issues to be Decided

- Has the Tenant met the service requirements of the *Residential Tenancy Act* (the “Act”)?
- Is the Tenant entitled to double the return of his security deposit?

#### Analysis

The evidence as laid out before me suggests that no tenancy or agreement has been established between the Tenant and the owner of the rental home. The Tenant was unable to provide sufficient evidence of how the owner of the rental unit is linked or connected to his tenancy or whether this was a sublet situation. In addition, while the Tenant served the owner with documents for this hearing, the Tenant did not name the Owner as a respondent on the Application. Therefore, at this point I must find that the owner of the rental unit is not a party to this dispute.

However, I am satisfied that the Tenant and the Landlord entered into an oral tenancy agreement that was ratified by the payment of a security deposit and monthly rent paid directly to the Landlord named on the Application.

I accept the Tenant made multiple attempts to contact the Landlord using the phone number that was hand written by the Landlord on the advertisement. I find the handwritten phone number was consistent with the number appearing in the typed text of the advertisement. The Landlord was likely avoiding the Tenant's phone calls.

I accept the Tenant's undisputed oral evidence that he located an address for the Landlord where he resided with his wife. I also accept the Tenant's testimony that he served his forwarding address in March 2017 as well as the Application and Hearing Package in October 2017, to the Landlord's address. I make this finding, based on the balance of probabilities, because the Landlord's wife signed for and received the documents that were also addressed to the Landlord named on the Application.

Pursuant to Section 71(2) (b) of the Act, I am satisfied that the Tenant has sufficiently served the Landlord with his: forwarding address; a copy of the Application; and notice of this hearing.

Accordingly, pursuant to my authority under Section 64(3) (c) of the Act, I amend the Tenant's Application to reflect the correct address of the Landlord, as it appears on the front page of this Decision.

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on May 30, 2016 and that the Landlord was provided with the Tenant's forwarding address in writing on March 23, 2017, this being within one year of the tenancy ending.

Pursuant to the deeming provisions of the Act, I find the Landlord was deemed to have received the Tenant's address in writing on March 28, 2017. Therefore, the Landlord would have had 15 days from this date onwards, to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me that the Landlord filed an application within the 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to withhold it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of his security deposit in the amount of \$200.00.

The Tenant is issued with a Monetary Order for this amount which must be served on the Landlord and may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment.

Copies of the order are attached to the Tenant's copy of this Decision. The Landlord may also be held liable for any enforcement costs incurred by the Tenant in obtaining the relief owed.

### Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is granted a Monetary Order for \$200.00 which comprises double the security deposit paid.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 08, 2017

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Residential Tenancy Branch