



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOLDEN CITY MANOR SOCIETY  
and [tenant protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 30, 2018 (the “Application”). The Tenant applied for the return of the security deposit.

The Tenant filed an amendment to the Application on May 3, 2018 removing a Respondent and withdrawing her request for interest to be paid on the security deposit (the “Amendment”).

The Tenant appeared for the hearing. K.S., Secretary of the Board of Directors, appeared for the Landlord. I explained the hearing process to both parties and neither had questions about the process when asked. Both parties provide affirmed testimony.

I explained to the Tenant that she may be entitled to the return of double her security deposit if I determined the Landlord breached the *Residential Tenancy Act* (the “Act”). The Tenant said she does not want double the security deposit back and waived her right in this regard.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package, Amendment and evidence. K.S. confirmed she received the hearing package, Amendment and Tenant’s evidence and raised no issues in this regard.

The Tenant testified that she received three of the five pages of evidence submitted by the Landlord. K.S. testified that all five pages were served on the Tenant. The Tenant submitted that it would be unfair for me to consider the two pages of evidence she did

not receive. These were letters that appeared to be from the Landlord to the Residential Tenancy Branch dated May 14, 2018 (the "Letters").

Rule 3.15 of the Rules of Procedure (the "Rules"), requires a Respondent to serve their evidence on the Applicant. Rule 3.17 of the Rules allows me to admit evidence not served in accordance with the Rules if doing so would not prejudice one party.

In my view, the party who served evidence on another party bears the onus to prove the evidence was served in accordance with the Rules. Here, the parties provided conflicting testimony on whether the Letters were served on the Tenant. Neither party pointed to evidence to support their position. In these circumstances, K.S. failed to prove the Letters were served in accordance with the Rules. I did not admit the Letters as, in my view, doing so would have been prejudicial to the Tenant who testified she had not seen the Letters. I told K.S. it was open to her to provide verbal testimony regarding the contents of the Letters.

Both parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

#### Issue to be Decided

1. Is the Tenant entitled to the return of the security deposit?

#### Background and Evidence

The Landlord had submitted a written tenancy agreement; however, it was a blank agreement not signed by either party. Both parties agreed there was a written tenancy agreement between the Tenant and Landlord regarding the rental unit. This agreement was not submitted to me and so I obtained oral testimony from the parties regarding the agreement.

Both parties believed the tenancy started November 1, 2011. Both parties agreed the security deposit was \$266.00 and that it was paid when the Tenant first moved into the building and transferred to the tenancy agreement for the rental unit in November of 2011. I understood K.S. to say the agreement was signed by both parties. The Tenant could not tell me whether the agreement was signed by both parties; however, she agreed there was a tenancy agreement between her and the Landlord in the above terms.

Both parties agreed the Tenant moved out of the rental unit April 30, 2016 and that the Landlord kept the entire security deposit up to the date of the hearing.

Both parties agreed to the following. The Tenant provided her forwarding address in writing to a representative of the Landlord around May 13, 2016. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

In relation to the Tenant agreeing the Landlord could keep some or all of the security deposit, K.S. pointed to term nine in the rental agreement submitted as evidence. This term states "A damage deposit shall be collected and will be used to repair any damage to the premises caused by the misconduct of the Tenant". K.S. said this term was in the tenancy agreement between the Tenant and Landlord. The Tenant said she did not know if this term was in the agreement.

K.S. said the Landlord did not apply for dispute resolution to keep the security deposit.

K.S. said a condition inspection was done upon move-in. The Tenant said someone showed her the unit but she did not remember signing anything. Both parties agreed the Landlord did not complete a Condition Inspection Report upon move-in.

K.S. said the Landlord did a condition inspection a few days after the Tenant moved out. Both parties agreed the Tenant did not participate in this. K.S. said the Landlord did not provide the Tenant with two opportunities to complete a condition inspection upon move-out. She said the Landlord tried to reach the Tenant but they could not locate her. She said she did not know if the Tenant was living in the unit until April 30, 2016. She agreed the Landlord knew the Tenant was moving out April 30, 2016. K.S. said the Landlord did a written Condition Inspection Report but did not provide this to the Tenant. The Tenant testified that she was living in the unit up until April 30, 2016. The Tenant said she was not given an opportunity to do a condition inspection upon move-out.

### Analysis

Based on the testimony of both parties, I find the Tenant provided her forwarding address to a representative of the Landlord around May 13, 2016. Based on the testimony of both parties, I find the Landlord did not repay the security deposit. I accept

the testimony of K.S. and find the Landlord did not apply for dispute resolution to keep the security deposit.

Based on the testimony of both parties, I find the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

Based on the testimony of both parties, I find the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Even if term nine of the rental agreement submitted was in the tenancy agreement between the Tenant and Landlord, this does not entitle the Landlord to keep the security deposit as the Tenant must agree to the Landlord keeping the security deposit at the end of the tenancy, not when the tenancy agreement is signed. I also find that this term, if it was in the tenancy agreement, is of no effect in any event as it is an attempt to contract outside of the *Act*, pursuant to section 5 of the *Act*.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy. Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or apply for dispute resolution to keep it within 15 days of receiving the Tenant's forwarding address in writing around May 13, 2016. The Landlord did not repay the security deposit or apply for dispute resolution to keep it.

There is no evidence the Tenant extinguished her right to return of the security deposit under section 24(1) of the *Act*. Further, the Tenant could not have extinguished her right to the return of the security deposit under section 36(1) of the *Act* as the Landlord did not offer the Tenant two opportunities for a move-out inspection according to K.S.

Based on my findings, the Landlord did not have authority under the *Act* to retain the security deposit.

I find the Landlord did not comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot make a claim against the security deposit and must pay the Tenant double the security deposit. However, the Tenant waived her right to double the security deposit and therefore the Tenant is entitled to the return of \$266.00.

I note that the condition of the rental unit upon move-in and move-out is irrelevant to this application. If the Landlord believed the Tenant damaged the unit, the Landlord was required to apply for dispute resolution claiming against the security deposit for the

damage. The Landlord was not entitled to keep the security deposit simply because they believed the unit was damaged. As explained above, even if term nine was in the tenancy agreement between the Tenant and Landlord, it is of no effect as the parties must deal with the security deposit in accordance with the *Act*.

I find the Tenant is entitled to a Monetary Order in the amount of \$266.00 for the return of the security deposit. I note that there is no interest owed to the Tenant on this security deposit as the percentage owed has been 0% since 2009.

### Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$266.00 and I grant this Order. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

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: June 15, 2018

---

Residential Tenancy Branch