



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TIMOTHY CASSAVETTES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### **PRELIMINARY MATTERS**

At the start of the conference call it was noted the Landlord had sent in information that may indicate this situation is a roommate agreement and not a tenancy agreement. The Landlord's information indicated the Landlord lives in the rental complex with the Tenant and they share kitchen and bathroom space. The Arbitrator asked the Landlord if he was also the owner of the unit. The Landlord said he did not own the rental complex but he acted for his brother who leased the complex and then they subleased rooms on a roommate agreement basis. The Arbitrator indicated that only shared accommodation with the owner of the property is excluded from the Act as shown in section 4 (c) of the Act. Consequently the Arbitrator said the Residential Tenancy Act does have jurisdiction in this situation and the hearing would proceed as scheduled.

### **Introduction**

This matter dealt with an application by the Tenant for the return of double the security deposit and to recover the filling fee. .

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 21 and August 26, 2018. The Landlord confirmed receiving the Tenant's hearing package Based on the evidence of the Tenant and the Landlord, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### **Issues(s) to be Decided**

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

### **Background and Evidence**

This tenancy started on March 1, 2018 as a month to month tenancy. The tenancy ended May 31, 2018. Rent was \$815.00 per month payable on the 1<sup>st</sup> day of each

month. The Tenant paid a security deposit of \$400.00 with his March 2018 rent payment. The Landlord said they do not call this deposit a security deposit, but it is considered ½ months prepaid rent. Further the Landlord said that if a tenant moves out in accordance to their agreement the Landlord will return the prepaid rent at the end of the tenancy. The Tenant said no condition inspection reports were completed at the start and end of the tenancy, but a walk through was done with an agent of the Landlord.

The Tenant said he moved into the rental unit on March 31, 2018. The Tenant continued to say the Landlord at first said he would return the deposit and then the Landlord said he wasn't returning the deposit. The Tenant said he gave the Landlord his forwarding address on June 21, 2018 by registered mail. The Tenant said he has not received his security deposit so he made this application. The Tenant continued to say that he understands the Act says that if a Landlord does not return the security deposit as described in the Act he can be awarded double the deposit.

The Landlord said they have not made an application to retain the Tenant's security deposit as they thought the Act did not apply to their rental situation. The Landlord continued to say that the Tenant's application is in error as he is not the Landlord. The representative of the Landlord said he did collect the rent and he managed the rental complex, but he was not the Landlord. The Arbitrator said that was the definition of an agent for the Landlord and the Arbitrator accepted that he was acting for the Landlord in this situation. The Landlord's agent disagreed with the Arbitrator.

The Landlord's agent continued to say that the Tenant did not give proper notice to end the tenancy so the Landlord had the right to keep the deposit.

The Tenant said in closing said he wants to apply for the return of double the security deposit as the Landlord has not complied with the Act.

The Landlord said in closing that he does not agree that the Residential Tenancy Act has jurisdiction and that he is the Landlord's agent. As well the Landlord's agent said because the Tenant gave improper notice to end the tenancy they did not have to return the deposit of \$400.00.

### Analysis

I have reviewed the testimony of both the Tenant and the Landlord regarding the security deposit. The Tenant says he paid a security deposit and requested it to be returned at the end of the tenancy. The Landlord said he collected \$400.00 at the start of the tenancy and called it prepaid rent. As there was no written tenancy agreement submitted and both parties agreed the Landlord collected an additional \$400.00 at the start of the tenancy to be held by the Landlord. I find this deposit is a security deposit whether the Landlord calls it a security deposit or prepaid rent. I accept the Tenant paid a security deposit of \$400.00 with the March 2018 rent payment.

The Act says: Condition inspection: start of tenancy or new pet

23 (1) **The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.**

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) **The landlord must complete a condition inspection report in accordance with the regulations.**

(5) **Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

**(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

**(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

I find the Landlord's claim on the Tenant's security deposit is extinguished due to the Landlord failing to complete a move in condition inspection report.

Further the Act says:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, 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.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I accept the Tenant's testimony and corroborative evidence that he gave the Landlord a forwarding address in writing on June 21, 2018 by registered mail. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by July 16, 2018. Consequently I find for the Tenant and grant an order for double the security deposit of \$400.00 in the amount of  $2 \times \$400.00 = \$800.00$ .

Further as the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord. I awarded the Tenant a monetary order for \$900.00 made up of \$800.00 for the doubling of the security deposit and \$100.00 to recover the filing fee.

#### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 & 72 of the Act, I grant a Monetary Order for \$900.00 to the Tenant. The order must be served on the respondent and is enforceable through the Provincial Court 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 *Residential Tenancy Act*.

Dated: December 17, 2018

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Residential Tenancy Branch