



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:51 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant gave undisputed sworn testimony supported by written evidence that they sent the landlord a copy of their dispute resolution hearing package and written evidence by registered mail on October 26, 2018. The tenant testified that this mail was sent to the landlord at the address of the rental property, the only address that the landlord has provided during this tenancy. The tenant testified that the original written Residential Tenancy Agreement (the Agreement) was entered into by a realty company, then representing the landlord and acting on the landlord's behalf. Once the landlord dismissed the realty company from its contract with the landlord to manage this rental property on the landlord's behalf, the tenant said that the only means of contacting the landlord was through email, text or by sending mail to the landlord at the address of the rental property. The tenant gave undisputed sworn testimony that the landlord routinely

picked up mail addressed to the landlord at the address of the rental property, the address where the tenant sent the hearing and evidence packages. The tenant provided copies of the Canada Post Tracking Number and testified that the landlord never picked up these packages sent to him by the tenant.

in accordance with section 88(c) and paragraph 89(1)(c) of the *Act* and based on the undisputed sworn testimony and written evidence provided by the tenant, I accept that the tenant's registered mailing of their dispute resolution hearing package and written evidence to the rental address was an appropriate method of serving the landlord with copies of these documents. For this reason, I find that the landlord has been deemed served with the dispute resolution hearing package and written evidence in accordance with sections 88(c), paragraph 89(1)(c) and 90 of the *Act*, on October 31, 2018, five days after their registered mailing.

#### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to a monetary award for the return of their security deposit?

#### Background and Evidence

The tenant gave undisputed sworn testimony that they were one of three parties who signed the Agreement when this tenancy started. The tenant testified that the other two parties who signed the Agreement, Tenant KN and Tenant TF, lived together in the upper suite and the tenant and the tenant's children lived in a separate two bedroom suite in the lower suite of this two unit rental home.

The tenant gave oral testimony and written evidence that the Agreement was a one-year tenancy, which started on January 28, 2017 and was to end on January 31, 2018. The tenant said that the realty company was unwilling to provide the tenant with a copy of the Agreement, after the landlord discontinued the contact with that company. The tenant said that they have never received a copy of the Agreement. When the initial term was over, the tenancy continued on a month-to-month basis. Monthly rent was set at \$2,100.00, payable in advance on the first of each month. Although the parties paid a security deposit of \$1,050.00, and a pet damage deposit of \$1,050.00 when this tenancy started, the tenant said that the landlord returned the pet damage deposit when Tenant TF vacated the premises in 2017 and took the pets with her. The tenant said that the landlord continues to hold the \$1,050.00 security deposit, \$525.00 of which the tenant paid when this tenancy began.

The tenant testified that Tenant TF "signed off" on their responsibility for this tenancy with the rental company well before the tenant vacated the rental property on or about September 30, 2018. The tenant said that they and Tenant KN signed an agreement with the rental company after Tenant TF signed off on their responsibility for the tenancy in which they both accepted joint responsibility for the terms of the tenancy after Tenant TF left.

Although the tenant did not submit a properly completed Monetary Order Worksheet as part of their extensive evidence package, the tenant's sworn testimony supported some of the information in the tenant's application. This information confirmed that the tenant was seeking a monetary award of \$525.00 for the return of their portion of the security deposit and \$2,625.00 in a further claim for losses arising out of this tenancy. This second amount was to compensate the tenant for their loss of quiet enjoyment, the landlord's actions in allowing for the changing of locks in the tenant's rental suite after this tenancy ended, the tenant's loss of personal belongings that remained in the rental unit after the locks were changed, and for the alleged threats from a sibling of one of the then residents of the upstairs suite, which led to the tenant's decision to vacate the rental unit and incur unwanted moving expenses. While the tenant said that they could provide receipts for these losses and expenses after the hearing, I advised the tenant that the time to file these documents was before the hearing and not after it.

The tenant testified that the brother of the tenant now living with Tenant KN in the upstairs suite and a friend of his threatened the tenant if they did not vacate the rental unit. The tenant provided written evidence to support their assertion that the reason for the actions by Tenant KN and the new person living with him in the upstairs suite was to obtain more rent from new tenants who could be obtained once the tenant vacated the premises. The tenant said that as far as the tenant knew, the landlord was uninvolved in Tenant KN's efforts to have the tenant vacate the rental property.

### Analysis

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 in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security

deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing.

In this case, the tenant moved out of the rental unit on September 30, 2018, but their only provision of their forwarding address has been by way of email and text message, and by way of their current application for dispute resolution. While these methods of notifying the landlord of the tenant's request to obtain a return of their security deposit do not necessarily qualify as a provision of the tenant's forwarding address in writing, I am also satisfied that the landlord is fully aware that the tenant has vacated the rental unit and has allowed someone else to live in the lower suite of this rental property. I acknowledge that this situation is complicated by the tenant's claim that both the tenant and Tenant KN are listed as joint tenants, accepting joint shared responsibility for the Agreement they signed with the landlord's realty company when this tenancy began and after Tenant TF vacated the premises in 2017. Since the landlord's realty company had the remaining parties sign an agreement in 2017 in which Tenant TF's ongoing responsibilities for the terms of this tenancy ended after Tenant TF vacated the rental unit, it would seem that the landlord should be aware that a similar process needed to be followed when the tenant vacated this property at the end of September 2018. I do not accept that the landlord could without the tenant's permission and after receiving a request to return their portion of the security deposit transfer the security deposit to the new tenancy that should have been created when new tenants moved into the lower level of this rental property. As the tenant's portion of the security deposit has not been returned and as the tenant has supplied undisputed written evidence that the landlord agreed to return the tenant's portion of the security deposit to the tenant by text message, I find that the tenant is entitled to a monetary award for the return of their \$525.00 portion of the security deposit for this tenancy. The landlord has 15 days after receipt of this decision to return this deposit to the tenant.

I have also carefully considered issuing a monetary award for double the value of the security deposit pursuant to section 38(6) of the *Act*. I find that the tenant's failure to provide written notice of their forwarding address to the landlord, separate from the tenant's dispute resolution application, is insufficient to enable me to make this finding. However, the landlord is on alert that this decision provides the landlord notice that they are required to return the tenant's \$525.00 security deposit to the tenant. Should they not return the tenant's security deposit in full as ordered in this decision, the tenant is at leave to apply for an additional monetary award equivalent to the value of the \$525.00 security deposit pursuant to section 38(6) of the *Act*.

Turning to the remaining portions of the tenant's application for a monetary award, I find that the actions the tenant has identified arise from disagreements with the other tenant who signed the Agreement with the tenant, Tenant KN, or his current roommate living with Tenant KN in that part of this rental home. As explained during the hearing, each party who signs a tenancy agreement accepts full responsibility for any commitments, obligations and rights accruing from their signature of that agreement. In this case, there is evidence that Tenant KN and the tenant were the sole remaining tenants bearing responsibility for their rights, obligations and commitments made with the landlord's representative when this tenancy began. I find the tenant is in error in believing that the landlord bears any responsibility for settling disputes between the tenants who have signed the Agreement with the landlord or in this case the landlord's representative, the realty company then representing the landlord. Both tenants are jointly and severally liable for their actions. This means that statements made by one tenant to the landlord where there are two joint tenants can be interpreted as agreement by both tenants to whatever direction was received by the landlord. In the context of this situation, I find that the landlord is without blame for acting on information provided by Tenant KN that the tenant had vacated the rental unit and would not be returning. I find that the landlord acted within their rights in changing locks to the rental unit upon receiving that information from Tenant KN.

Whether Tenant KN was acting honestly in advising the landlord that the tenant had vacated the rental unit and would not be returning is not a matter that can be addressed through the *Act*. Similarly, the *Act* limits me to considering the issuance of monetary awards against the landlord for alleged breaches of the Agreement or the *Act*. My jurisdiction does not extend to a consideration of actions taken by a joint tenant or someone acting on that joint tenant's behalf. I cannot make orders against one tenant and in favour of another tenant. As noted at the hearing, any recourse that the tenant may have against the other tenant could not be pursued through the *Residential Tenancy Act*.

I find that there is insufficient evidence that the landlord was in any way involved in the alleged threats against the tenant or in measures to end her tenancy so as to enable the other tenant, Tenant KN or his new roommate, to reduce their portion of the monthly rent to be paid to the landlord. Any loss of quiet enjoyment as described by the tenant would again seem to be directed at the other tenant who signed the Agreement. The landlord bears no responsibility in disputes between co-signatories to the Agreement with the landlord or in losses arising out of instructions provided by one tenant that may have had an impact on the other tenant. I dismiss all portions of the tenant's application

for a monetary award against the landlord with the exception of the portion outlined above relating to the return of the security deposit.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$525.00 requiring the landlord to return the tenant's portion of the security deposit within 15 days of deemed receipt of this decision. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order in the event that the landlord does not return the tenant's security deposit within 15 days of the landlord's deemed receipt of this decision. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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 21, 2019

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Residential Tenancy Branch