



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNDC, MNSD, O

### Introduction

This hearing dealt with an application by the tenants for a monetary order. The hearing was conducted on September 18 and at the end of the hearing the tenants were asked to provide a copy of statements from the Ministry of Employment and Income Assistance (the “Ministry”) for the benefits months of January and February to both the landlord and to this office. The landlord was asked to provide written confirmation to this office that he had received the statements from the tenants.

At the hearing the landlord requested that the hearing be held in person rather than as a conference call because he claimed that the tenants had altered 2 key documents. I denied that request but advised the parties that if on review of the evidence I found that I was not able to make a decision without seeing the original documents, I would schedule a reconvene of the hearing in order to examine the original documents. After having reviewed the documentary evidence, I determined that it was unnecessary to hold an in person hearing as, for reasons explained below, my decision did not turn on whether the documents in question had been altered. The hearing is closed with the receipt of the requested documents and this decision is therefore final and binding on the parties.

The tenants had requested a \$500.00 award against the landlord which in my view was designed to punish the landlord. At the outset of the hearing I advised the tenants that I do not have the authority to make an award of punitive damages. The claim for punitive damages is dismissed as it is beyond the scope of my jurisdiction.

### Issue(s) to be Decided

Did the tenants pay rent for the month of January 2009 and, if they did, are they entitled to recover that rental payment?

Are the tenants entitled to recover a payment made by the Ministry to the landlord at the end of May?

Are the tenants entitled to an order for the return of double their security deposit?

### Background and Evidence

The parties agreed that the landlord gave the tenants the keys to the rental unit on or about January 1, 2009 and that they moved into the rental unit on or about January 27, 2009. The parties further agreed that a tenancy agreement was signed which set the start of tenancy at February 1, 2009. The parties further agreed that the tenants performed work in the rental unit during the month of January which included removing carpets and painting. The parties further agreed that the tenants paid a \$550.00 security deposit on January 25.

The tenants testified that on or about January 28 they gave the landlord a cheque from the Ministry which was made payable to the landlord, for \$800.00 and that they gave the landlord a further \$300.00. The tenants testified that this \$1,100.00 payment was rent for the month of January and provided a copy of a receipt dated January 28 for \$1,100.00. The landlord agreed that he received this money but testified that it was received as rent for the month of February. The landlord testified that the original receipt was issued with the statement "rent for February 2009." The landlord denied having received any rent for the month of January. The tenants maintain that they should not have to pay rent for a period of time in which they did not occupy the rental unit.

The tenants testified that in early April they gave the landlord a mutual agreement to end tenancy, indicating that they wished to end the tenancy on May 1. The landlord testified that the tenants gave him a mutual agreement to end tenancy which had different dates than the one provided by the tenants as evidence. The tenants acknowledge that there were two mutual agreements prepared and that they initially

gave the wrong agreement to the landlord. The landlord did not sign either agreement and testified that he took the agreement to be the tenants' notice that they intended to vacate the rental unit at the end of May, which would have been proper notice under the Act.

The parties agreed that in an email dated April 30 the tenants told the landlord that they would not be able to move out for another week and advised that the landlord could keep the security deposit. The email reads in part, "We will be out in a week so therefore just keep our damage deposit." The tenants testified that what they meant by that email was that the landlord could retain the security deposit if they did not stay past May 10. The tenants claim that they spoke directly with the landlord and advised him that he could not keep the deposit since they moved out on or about May 8. The tenants further testified that the landlord told them they would receive the deposit back if he was able to re-rent the unit in May.

The parties agreed that the landlord received a cheque for \$800.00 from the Ministry at the end of May which he cashed. The tenants testified that the cheque was intended to cover June's rent and was sent to the landlord in error as the Ministry had failed to update their information to reflect that cheques should be made payable to their new landlord at a different address. The landlord testified that he assumed the cheque had been sent to cover his loss of income for May because the tenants had not given a full month's notice that they were vacating and further testified that he kept the deposit and cashed the cheque as compensation for loss of income and for damage to the rental unit.

### Analysis

First addressing the tenant's claim for recovery of rent paid for January, in order to be successful in this claim the tenants must prove that they paid rent for the month of January. At my request, the tenants faxed a copy of their benefits statement from the Ministry for the benefit months of January and February. The statement for the benefit month of January shows that the Ministry paid \$400.00 to the landlord, which is \$400.00 less than they paid the landlord each month during the rest of the tenancy. I find that the monies paid by the Ministry for that month were to be applied to the security deposit,

which the landlord acknowledged having received. I find that the tenants have not proven that they paid rent for the month of January and accordingly the claim for recovery of rent for that month is dismissed.

I find that although the landlord may have been under the impression that the cheque from the Ministry at the end of May was issued to him to compensate him for loss of income, it was not. I find that the cheque was issued for rent for the tenants for the month of June, that it was issued to the landlord in error and that the landlord was not entitled to cash the cheque. I order that the landlord return \$800.00 to the tenants forthwith.

I find that the tenants gave the landlord permission in writing to retain the security deposit with no written conditions attached thereto and are therefore estopped from claiming recovery of their security deposit. The claim for double the security deposit is dismissed.

The tenants are awarded a total of \$800.00 and I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenants are awarded \$800.00.

Dated September 22, 2009.

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