



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution made by the tenant for a monetary order relating to money owed or compensation for damage or loss under the Act, a monetary order for the return of all or part of the pet damage or security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant filed this application on March 13, 2013 and served the landlord by registered mail on March 14, 2013 with a copy of the application and Notice of Hearing. The Canada Post tracking number was provided by the tenant in documentary evidence and based on this I find that the landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per the *Residential Tenancy Act*.

The tenant attended the hearing to give affirmed testimony and provided evidence in advance of the hearing. There was no appearance by the landlord, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to the return of double the amount of the security deposit?
- Is the tenant entitled to costs relating to losses incurred under the Act?

### Background and Evidence

The tenant testified that a viewing of the rental unit had taken place in the first week of December 2012 with the landlord. The tenancy was advertised to start on December 15, 2012 and the landlord agreed that it would be for a monthly rent of \$1600.00 payable on

the first day of each month. The tenant testified that a number of appointments had been made with the landlord to meet in order to sign a tenancy agreement before December 15, 2012 but the landlord cancelled each time.

On December 16, 2012 the tenant texted the landlord requesting permission to move belongings into the rental unit and also requesting the keys as the tenancy was supposed to have already started. The landlord agreed and the tenant paid a security deposit of \$800.00 on December 16, 2012 by electronic transfer, the transaction for which was provided as evidence. A meeting was arranged for December 21, 2012 so that the keys could be exchanged and the tenancy agreement signed.

The tenant testified that the landlord cancelled another two pre-arranged meetings on December 21 and 22, 2012 because the existing tenants had failed to leave and were not intending to leave until December 27, 2012. A final move-in date of December 28, 2012 was arranged, during which date, the landlord and tenant signed a tenancy agreement which the tenant testified had a start date for December 28, 2012 and keys were exchanged. However, the existing tenants were having an altercation with the landlord and were refusing to leave because they had paid up until the end of December, 2012. As a result the tenant was forced to give the landlord back the keys. At this point the tenant testified that she had booked movers and taken two days off from work for the move.

The tenant decided that due to the inconvenience she had gone through, the pressure and cost of having to move out of her current rental unit having given notice to leave it for December 15, 2012 and the threat of the current tenants not leaving, the tenancy could not be honoured. The tenant testified that the next day she texted the landlord giving notice to end the tenancy and asked for the return of the security deposit. The landlord replied back by text stating that she would only be willing to give her half back. Subsequently, the tenant testified that on February 14, 2013 she sent the landlord a forwarding address in writing by mail requesting the full amount back.

The tenant claims: the return of double the amount of her security deposit; \$85 for costs relating to storage of personal belongings for part of December 2012 and January 2013; \$50 for the moving company's cancellation fee and, lost wages for December 29 and 30, 2012 amounting to \$400.80 relating to the time she used to put her belongings into storage.

The landlord failed to attend the hearing or provide any written submissions prior to this hearing taking place and therefore did not dispute the evidence provided.

### Analysis

Section 38(1) of the *Residential Tenancy Act* states that, within 15 days of the landlord receiving the tenant's forwarding address in writing after the tenancy ends, the landlord must repay the security deposit or make an application to claim against it. The tenant testified that a text message had been sent to the landlord giving notice that the tenancy had ended and the landlord received this because she responded with a text message stating that only half the amount would be returned. Based on the continual communication that the landlord and tenant had through a pattern of text messages and the undisputed evidence of the landlord, I accept that the tenancy ended in this manner.

The forwarding address was sent to the landlord in writing on February 15, 2013 by mail. The *Act* states that notices served by mail are deemed to have been received after the fifth day of mailing. Based on the verbal testimony of the tenant and the absence of any testimony from the landlord, I find the tenant served the forwarding address in writing to the landlord in accordance with the *Act* and as a result the landlord was required to repay the security deposit or make an application to claim against it by March 7, 2013.

Section 38(6) of the *Act* states that if a landlord does not comply with the above, the landlord must pay the tenant double the amount of the security deposit. Therefore, the tenant is entitled to the return of double the amount of the \$800.00 security deposit already paid totaling \$1600.00.

In respect to the claim by the tenant for costs relating to damage or loss under the *Act*, I determined during the hearing that this totaled an amount of \$535.80. The tenant failed to provide any documentary evidence such as receipts or invoices to support these claims. Therefore, I am unable to decide on this portion of the claim and dismiss this without leave to re-apply.

As the tenant has been partially successful in this monetary claim I also award the tenant \$50.00 for the cost of this application.

### Conclusion

For the reasons set out above, I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1600.00. This order must be served on the landlord and may be filed in the Small Claims 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 *Residential Tenancy Act*.

Dated: June 06, 2013

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Residential Tenancy Branch