



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants/applicants for return of double the security deposit and to recover the filing fee from the other party.

Both parties appeared.

### Preliminary matter – June 17, 2014

At the outset of the hearing the landlord requested an adjournment in order to present evidence that ST is not a tenant under the terms of the tenancy agreement. The landlord stated that she has just received the documentary evidence of the applicants, although the application was filed on February 28, 2014.

As the evidence of the tenants/applicants was filed on June 16, 2014 and not in compliance with the Residential Tenancy Branch Rules of Procedures, I find an adjournment appropriate in this case to give the landlord a fair opportunity to respond.

The applicant ST provided a new address for service of documents during the hearing.

### Preliminary matter – August 19, 2014

At the outset of the hearing the landlord stated she attempted to serve the applicants with her evidence at the address provided at the previous hearing, however, Canada post returned the package because the recipient was no located at the address provided. Filed in evidence is a copy of the Canada post track history, which supports the landlord's position.

The applicant ST stated they do not live at the address that she provided on the previous date, however, they did receive the notice of hearing at the address.

As the applicant ST provided a service address at the previous hearing and the landlord complied by sending their evidence to that address, I will allow the landlord evidence to be admitted as evidence, as it would be unfair to exclude the evidence when the

applicant provided an address for service where they were not residing and it was returned by Canada post.

### Issue to be Decided

Are the tenants/applicants entitled to double the security deposit?

### Background and Evidence

The parties agreed the tenancy commenced on September 3, 2013. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$650.00 was paid.

At the outset of the hearing the landlord stated that ST is not a tenant under the terms of the tenancy agreement and has no legal rights or obligation under the Act. The landlord stated she entered into a fixed term agreement with the tenant AZ, on September 3, 2013, with an attached addendum. The landlord stated although AZ, extinguished their right to the return of the security deposit she has returned a portion of the security deposit to AZ.

The landlord stated the tenant AZ is not present and ST has no personal knowledge of what happened at the end of the tenancy and there is no letter authorizing ST to act as agent for AZ and seek that the matter be dismissed.

ST stated that the landlord gave them a subsequent tenancy agreement. The tenant stated the landlord gave her the original agreement and that she no longer has a copy of that agreement and did not provide a signed copy of that agreement to the landlord.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the both parties have provided a different version as to who the tenants are under the terms of the tenancy agreement. However, both parties at the start of the hearing agreed the tenancy commenced on September 3, 2013.

I have reviewed the tenancy agreement filed in evidence by the landlord, which confirms the tenancy commenced on September 3, 2013. That agreement also confirms the only tenant list on the agreement is AZ. Although I accept AZ allowed ST, to reside in one of the rooms that were rented under the tenancy agreement and ST paid her portion of rent; however, that was not as a tenant under the terms of the tenancy agreement signed on September 3, 2013. The applicant ST has not provided any documentary evidence of a subsequent agreement that added her as a co-tenant.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

As a result, I accept the signed tenancy agreement of September 3, 2013 and I find ST is not a tenant under the agreement and has no legal rights to claim against the security deposit.

The tenant AZ has not been present during the course of the proceeding and I am unable to determine if ST is authorized to appear on her behalf or if ST was authorized to provide a change of address. Therefore, I grant the landlord's request and dismiss the application with leave for the tenant AZ to reapply.

#### Conclusion

The application of ST is dismissed as ST is not a tenant under the signed tenancy agreement. I grant leave for AZ to reapply as I am unable to determine if ST was authorized to appear on her behalf or if the change of address was authorized by AZ.

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: August 20, 2014

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Residential Tenancy Branch

