



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD, OLC, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that he had mailed the notice of hearing by registered mail to the landlord and filed proof of having done so on June 12, 2014. The tenant filed copies of the tracking slip, receipt and a print out of the track history. The track history indicates that on June 13, 2014 the item was successfully delivered to a person with the same name as the landlord, who signed for it. The landlord stated that it was not his signature. Since the tenant mailed the package to the landlord's address by registered mail, I find that the landlord was served with the notice of hearing on June 13, 2014.

The landlord stated that he filed his evidence late because he had been served with a notice of hearing just a few days before this hearing, when he found a package at his front door. The landlord stated that he visited the Residential Tenancy Branch office and obtained an address for the tenant to which he mailed his evidence package and notice of hearing. The landlord confirmed that the address he got from the office was the business address of the tenant. The tenant stated that he had not received the landlord's evidence and that he had not provided his business address to the Residential Tenancy Branch. Since the landlord had mailed his evidence package a couple of days prior to the hearing, the evidence was probably on its way to the tenant.

I considered reconvening this hearing, but since I had determined that the landlord was served on June 13, 2014, I decided to continue hearing the matter and reconvene if it became necessary to do so.

### **Issues to be Decided**

Is the tenant entitled to the return of double the security deposit and the filing fee?

## **Background and Evidence**

The tenancy started on January 01, 2012 and ended on April 30, 2014. The monthly rent was \$1,300.00 payable on the first of each month and did not include utilities. Prior to moving in the tenant paid a security deposit of \$650.00. The rental unit was located in the upper two levels of the landlord's home. The landlord lives on the lower level. A copy of the rental agreement with addendum was filed into evidence.

The female tenant testified that on March 29, 2014, she went along with her daughter to the lower level and gave the landlord a letter which was a written notice to end tenancy. She stated that she had given verbal notice earlier and upon the landlord's request, provided the landlord with written notice. The tenant stated that a friend who was outside in his car witnessed her do so. A copy of the letter was filed into evidence.

In the letter, the tenant provided a forwarding address which is the address of a business that he owns and operates. The tenant stated that at the time he wrote the notice, he did not have a residential address to move to and therefore provided his business address to which the security deposit could be returned. The landlord denied having received the notice to end tenancy.

Despite the landlord's denials of having received written notice from the tenant, shortly after, on April 02, 2014, the landlord wrote a note to the tenants regarding arrangements for a move out inspection. On April 30, 2014 the landlord carried out an inspection in the presence of the female tenant. The female tenant agreed that she had conducted the inspection and stated that everything was in order. The tenant filed photographs to show the condition of the rental unit as they left it. The landlord filed a move out inspection report which is signed by the tenant. The tenant denied having signed the report or having received a copy of the report

A portion of the report refers to the list of deductions from the security deposit that the tenant agreed to. The tenant stated that she did not agree to any deductions off the security deposit. The details of the deductions allegedly agreed to by the tenant were not noted on the report. The report states that the tenant agreed to deductions as per the attached addendum. A term in the addendum states

*" ....if any damages are caused by the tenant while occupying the top two floors of 4 bedroom home, that landlord may keep the full security /damage deposit or part of security /damage deposit to pay for any repairs required to the total top two floors, like walls, carpets, flooring/tiles, window coverings. Doors/closet, including any and all appliances tenant(s) have access to use provided by landlord like fridge, stove, dishwasher, washer and dryer."*

The landlord relied on this term and retained the entire deposit towards damages. The tenant stated that when she did not receive the deposit, she sent a text message to the landlord on June 07, 2014, asking for the deposit. The landlord did not reply. On June 09, the tenant filed an application for dispute resolution.

On October 03, 2014, the landlord made his own application for damages and this matter is scheduled to be heard on November 17, 2014. The landlord stated that he has already mailed the notice of hearing to the tenant at his business address that he obtained from the Residential Tenancy Branch. The tenant expressed surprise as he stated that he did not provide his business address to the Residential Tenancy Branch. The tenant stated that the only time he provided his business address to the landlord was when he served the landlord with his notice to end tenancy on March 29, 2014.

### **Analysis**

Based on the move out inspection filed into evidence by the landlord and the testimony of both parties, I find that the list of deductions was not specified and explained to the tenant. The tenant stated that she did not agree to any deductions and the landlord relied on a term in the addendum which states that the landlord may keep the entire security deposit towards the cost of repairs. The landlord has filed his own application for damages but only did so in response to the tenant's application for the return of the security deposit.

The tenant also testified that she sent the landlord a message on June 06, 2014 requesting the return of the deposit and did not hear back. Based on the above, I find that it is more likely than not that the tenant did not agree to deductions off the security deposit. Even if I find that the tenant agreed to deductions, the details of the deductions were not listed in the inspection report.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. The parties agreed that the tenancy ended on April 30, 2014. I have now to determine the date that the landlord was provided with the tenant's forwarding address. The tenant stated that he had provided his forwarding address with his notice to end tenancy on March 29, 2014. The landlord stated that he got the tenant's business address from the Residential Tenancy Branch. However the business address of the tenant is not listed as a mailing or a residential address on the tenant's file in the electronic file management system at the Residential Tenancy Branch Office.

Based on the above I find on a balance of probabilities that the landlord obtained the tenant's business address from the notice to end tenancy. I further find that the landlord did receive the notice to end tenancy along with the forwarding address on March 29, 2014, because he wrote a note on April 02, 2014 to make arrangements for an inspection on the move out date.

Overall I prefer the testimony of the tenant and I find it to be credible. Therefore, I find on a balance of probabilities that it is more likely than not that the landlord was provided with a forwarding address on March 29, 2014. The tenancy ended on April 30, 2014 and the landlord failed to return the security deposit or make an application to retain the security deposit in a timely manner. Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$650.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$0.00. Since the tenant has proven his case, I award him the recovery of the filing fee of \$50.00.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for \$1,350.00, which represents double the base security deposit plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order for the amount of **\$1,350.00**.

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: October 09, 2014

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Residential Tenancy Branch

