



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled to deal with cross applications. The landlord applied for a Monetary Order for damage to the residential property; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet damage deposit. The tenants applied for returned of double the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The tenants confirmed receipt of the landlord's application and evidence and were willing to be deemed sufficiently served despite the landlord's use of a courier service and failure to serve each tenant individually.

The landlord confirmed that she received the tenant's application since it was sent to her residence in the United States. The tenant's application was sent by way of a courier service and the landlord was willing to be deemed sufficiently served with their application. The landlord; however, testified that she had not received the tenants' evidence. The tenants explained that they sent their application to the landlord in the United States because they knew that is where the landlord resided and that is where they had previously addressed communication to the landlord. With respect to their evidence, the tenants testified that they sent it to the landlord at the rental unit address since that is the service address the landlord provided on the landlord's application.

The landlord responded by stating she provided the rental unit address as her service address on her application in error and pointed out that the tenants had her service address in the United States.

The option of adjourning the proceeding and ordering re-service of the tenant's evidence to the landlord was discussed. Both parties indicated that they were not agreeable to adjourning the proceeding.

Dispute resolution proceedings are based on the principles of natural justice. As such, both parties are entitled to receive and prepare a response to evidence that the other party intends to rely upon. This is one of the reasons why an applicant must provide a service address at which they may be served with documents or evidence in filing their application. I informed the parties that I was prepared to dismiss the landlord's application with leave since the parties were not agreeable to an adjournment. The tenants objected to granting the landlord leave. The tenants' reason for their objection was that to do so would give the landlord an opportunity to receive their evidence and prepare a response to it. I found the tenants' objection without merit since the landlord would be entitled to receive the tenant's evidence and prepare a response in any event. Of further consideration is that the tenants acknowledged that they were aware that the landlord resided at her United States address and not the rental unit and they served their application to her in the United States but their evidence was sent to the rental unit. I was of the view that the tenants intended for the landlord to not receive their evidence in a timely manner or at all. Therefore, I rejected the tenants' position and I dismissed the landlord's application with leave to reapply.

#### Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit and pet damage deposit?

#### Background and Evidence

The tenancy commenced November 1, 2013 and the tenants paid a security deposit and pet damage deposit totalling \$3,000.00. The tenants were required to pay rent of \$4,300.00 on the 1<sup>st</sup> day of every month.

The tenants provided the landlord with their forwarding address by way of their notice to end tenancy dated "April 31, 2015". The tenants mailed the letter to the landlord at her service address in the United States. After pointing out that there are not 31 days in April, the tenants testified that they mailed the letter to the landlord on April 30, 2015. The landlord testified that she received the letter on May 7, 2015.

The tenants were of the position the tenancy ended May 31, 2015; whereas, the landlord was of the position the tenancy ended June 30, 2015 given their insufficient notice to end tenancy.

According to Residential Tenancy Branch records, the landlord filed her application and paid the filing fee on June 10, 2015 although the hearing package was not generated until June 19, 2015 because corrections were required. Included in the landlord's monetary claim was a request to recover unpaid rent and losses associated to damage to the property. The landlord's application was dismissed, with leave, during this proceeding for the reasons given above.

### Analysis

Section 38(1) of the Act provides that a landlord must either return the security deposit and/or pet damage deposit to the tenant or make an Application for Dispute Resolution to claim against it unless the landlord has otherwise obtained the legal right to retain the deposit(s). The time limit for refunding or claiming against the deposit(s) is within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the deposit(s).

Where a landlord fails to prepare condition inspection reports, a landlord extinguishes the right to claim against deposit for damage to the rental unit or property. In this case, the landlord extinguished her right to claim against the deposits for damage since she failed to prepare condition inspection reports; however, the landlord's claim did include claims for amounts other than damage, such as unpaid and/or loss of rent.

In this case, it is necessary to determine whether the date the tenancy ended in order to determine whether the landlord met her statutory time limit of 15 days in order to comply with section 38(1) of the Act.

Section 44 of the Act provides for ways a tenancy ends. There are multiple ways a tenancy ends including a tenant's notice to end tenancy and when the tenant vacates or abandons the rental unit. Where more than one reason provided under section 44 could apply I find it reasonable to conclude the tenancy ended on the earliest date provided under section 44. In this case, the tenant's notice may be considered insufficient to end the tenancy effective May 31, 2015 and end their obligation to pay rent under the Act; however, I find the tenancy ended May 31, 2015 when they vacated the rental unit.

The Rules of Procedure provide when an application is considered to be filed. Under Rule 2.6 an application is considered filed when the application is submitted to the Residential Tenancy Branch and the applicable filing fee is paid. In this case, the landlord's application was filed June 10, 2015 according to the Branch's records.

Having found the tenancy ended May 31, 2015 and the landlord filed a claim against the deposits on June 10, 2015 I find the landlord did meet her obligation to take action with respect to the deposits within the time limit of 15 days. Therefore, I find the tenants are not entitled to doubling of their deposits.

Since I have dismissed the landlord's claims against the deposits with leave, I find the tenants are entitled to return of their deposits in the singular amount at this point. Therefore, I provide the tenants with a Monetary Order in the amount of \$3,000.00 plus recovery of one-half of the filing fee they paid for their application or \$25.00.

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The tenants are provide a Monetary Order in the sum of \$3,025.00 for return of the security deposit and pet damage deposit in the single amount, plus recovery of a portion of the filing fee..

The landlord's claims against the tenants were dismissed with 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: December 18, 2015

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Residential Tenancy Branch

