



# Dispute Resolution Services

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

## **DECISION AND REASONS**

**Dispute Codes:** MNSD, MNR, FF

### **Introduction**

This hearing was convened upon the application of the tenant seeking:

1. A monetary order for the return of his security deposit;
2. A monetary order for one months' rent;
3. A monetary order for recovery of the filing fee paid for this application.

### **Issue(s) to be Decided**

1. Whether the tenant is entitled to the return of his security deposit plus interest under Section 38.
2. Whether the tenant is entitled to compensation of one months' rent under Section 49 – ending a tenancy for landlord's use.
3. Whether the tenant is entitled to compensation under Section 50 following the issuance of a Section 49 notice.

### **Background and Evidence**

The tenant gave evidence that this tenancy started approximately August 1, 2007 and ended on June 30, 2008 following the issuance of a 2 month Notice to End Tenancy given for Landlord's Use. The tenant says that he provided his forwarding address to the landlord on August 9, 2008 and the landlord acknowledges receipt of the tenant's forwarding address. The tenant says that he was served with an Application for Dispute Resolution filed by the landlord seeking to retain the tenant's security deposit but the landlord cancelled the hearing. The landlord agreed that he cancelled the hearing

because the tenant had moved out. The tenant says that to date he has still not received his security deposit and interest from the landlord.

With respect to the tenants' claim for one month's rent based on the 2 month Notice to End Tenancy for Landlord's Use the tenant says that he paid the rent for the entire 2 month notice period and did not receive any compensation therefore. The tenant also says that to date the landlord has not had a relative move into the rental unit after he moved out.

The landlord says that the people who moved into the rental unit are his relatives but they are not his or his wife's mother, father, sister or brother.

### **Analysis**

#### **Ending a tenancy for Landlord's Use – Landlord's Family Member to Occupy the Rental Unit**

Section 49 of the *Residential Tenancy Act* describes the provisions for issuing a 2 Month Notice to End Tenancy for Landlord's Use. Section 49 allows a landlord to end a tenancy in order to allow a close family member to move into the rental unit. The Act says a "close family member" must be the landlord's father, mother, spouse or child or the father, mother or child of the landlord's spouse.

Section 51 says that when a landlord issues a Section 49 2 month Notice to End Tenancy for Landlord's Use the tenant is entitled to compensation payable on or before the effective date of the Notice. The compensation the Act says the landlord must pay the tenant the equivalent of one month's rent. A tenant may withhold one month's rent however, if the tenant does not withhold one month's rent then the landlord must refund the equivalent of one month's rent to the tenant.

Further, Section 51 says that if the landlord does not take steps to accomplish the purpose for which he ended the tenancy within a reasonable time and for at least 6

months, then the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

### **Security Deposit**

Section 38 describes the steps to be taken with respect to the security deposit. It says that when a tenancy ends the security deposit must be returned to the tenant either within 15 days of the landlord receiving the tenant's forwarding address or within 15 days of the date the tenancy ended, whichever event occurs last.

If the landlord believes he should be entitled to retain the deposit the landlord must seek the tenant's permission to retain the deposit. If that permission is not given, a landlord must file and serve an Application for Dispute Resolution seeking permission from the Residential Tenancy Branch to retain the deposit.

The Act says that if a landlord does not return the deposit, does not have a tenant's permission to keep the deposit or if the landlord does not have an Order from the Residential Tenancy Branch allowing the landlord to retain the deposit then he must return to the tenant double the deposit paid with interest calculated only on the initial deposit paid.

### **Conclusion**

The evidence of both parties is that while the landlord did file an Application for Dispute Resolution to be allowed to retain the security deposit the landlord abandoned that application when the tenant vacated the rental unit but the landlord did not return the deposit to the tenant. The Act says that in these situations, the tenant is entitled to recover double the security deposit, in this case, \$1,100.00 with interest calculated from the date paid to the date of this decision and order.

Further, I find that the evidence shows that the landlord did not pay the tenant one month's compensation after giving the tenant a 2 month Notice to End Tenancy for

Landlord's Use. The tenant is therefore entitled to recover one months' rent that is \$550.00.

Finally, I find that the evidence of both parties is that the "family members" who moved into the rental unit were not close family members as described under the Act.

Therefore the landlord has not accomplished the purpose for which he ended the tenancy and the tenant is entitled to double the monthly rent that is \$1,100.00.

Calculation of Monetary Award in Favour of Tenant:

Section 49 Compensation of one month's rent	\$ 550.00
Section 50 compensation of double the monthly rent	1,100.00
Return of the Security Deposit	550.00
Interest on the security deposit from the date paid until today	9.08
Section 39 compensation when deposit is not returned	550.00
<b>Total Monetary Award Payable by the Landlord to the Tenant</b>	<b>\$2,759.08</b>

The tenant will be provided with a formal Order which the tenant must serve on the Landlord. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Dated October 08, 2008.