



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

MNDC, MNSD, & FF

### Introduction

This hearing dealt with an application by the tenant seeking compensation related to a two month Notice to End Tenancy served for landlord's use of the rental unit and for the return of double her security deposit plus interest.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issues(s)

Did the tenant pay a security deposit to the landlord? How much was the security deposit if it was paid?

Is the tenant entitled to compensation further to a two month Notice to End Tenancy for Landlord's Use of the rental unit?

### Background and Evidence

This tenancy began back on approximately September or December 1, 2002; however, the tenancy was originally with a former landlord. The current landlord took over the rental unit on approximately July 1, 2004. The current landlord claims that the original landlord returned the tenant's security deposit and denies ever receiving a security deposit from the tenant. The tenant submitted that the landlord would have been paid a security deposit; however, there is no documentary evidence to support that one was paid.

Both party presented verbal testimony that was disputed and largely unsupported by any corroborating evidence. For example, each party acknowledged that rent was mostly paid by cash but the tenant stated receipts were never given while the landlord claimed that receipts were always provided. The landlord did not provide any of the alleged receipts.

It was conceded that an invalid notice to end tenancy was given to the tenant in September 2009 by the landlord who did not realize her requirement under the *Act* to

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issue proper notice on an approved form. A proper two month Notice to End Tenancy was issued October 1, 2008 and the tenant vacated by October 31, 2008 after providing notice to vacate. The landlord acknowledged being unable to pay the compensation required by section 51 of the *Act*.

I note that the both parties submitted extensive documentary evidence; however, most of it was irrelevant to the application before me. The landlord submitted evidence concerning the alleged condition of the rental unit, but this was not an issue before me and I have not considered any of this evidence.

## Analysis

I grant the tenant's application in part. I find that the tenant has failed to establish that a security deposit was paid to the landlord. Given the acrimonious relationship and contested oral testimony, I find that the tenant failed to meet the burden of proof required to establish that a security deposit was paid to the landlord when she took possession of the rental unit around July 2004.

I accept the documentary evidence before me that the tenant was served with a two month Notice to End Tenancy for Landlord's Use of the Rental Unit. Pursuant to section 51 of the *Act* which states:

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.



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I find that the landlord is to pay the tenant the equivalent of one month's rent in compensation. Therefore, I find that the tenant has established a total monetary claim for the sum of **\$1,600.00**. I grant the tenant a monetary Order for this sum. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

## Conclusion

I grant the tenant's application in part finding that the tenant is entitled to compensation pursuant to section 51 of the *Act* and to the recovery of the filing fee paid for this application.

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: September 8, 2009.

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Dispute Resolution Officer