



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, to recover double his security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlords by registered mail on July 23, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. The landlord sent documentary evidence to me but failed to send this to the tenant. This evidence was filed late. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the tenant entitled to receive double the security deposit back?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

## Background and Evidence

This tenancy started on March 15, 2006 and ended on June 30, 2009. At the end of the tenancy the rent was \$1,659.20 per month. The tenant paid a security deposit of \$775.00 on March 13, 2009.

The tenant testifies that the landlord was trying to sell the rental unit. The landlord gave the tenant a Two Month Notice to End Tenancy on May 28, 2009 to vacate the unit on July 31, 2009. The reasons stated on this Notice were: all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give notice to the tenant because the purchaser or a close family member intends in good faith to occupy the rental unit. On June 19, 2009 the tenant gave the landlord 10 Day Notice to end Tenancy and moved from the rental unit on June 30, 2009. The tenant gave the landlord's agent his forwarding address on June 19, 2009 and requested the return of his security deposit plus any accrued interest.

The tenant testifies that the landlord did not return his security deposit to him within the 15 days allowed by the Act. The landlord did send the tenant a cheque for \$801.63 on July 20, 2009. The tenant is claiming double his security deposit.

The tenant discovered that the landlord had not sold the unit as specified on the two month notice and claims compensation equivalent to two months rent.

The tenant claims that the landlord gave him seven notices to view the property in the last month of his tenancy. There were three open houses and four other viewings. The tenant claims a loss of quiet enjoyment for these viewings as he feels they were intrusive and excessive.

The landlord testifies that he did not receive the tenants forwarding address from his management company until July 20, 2009 and he sent the tenant his security deposit on the same day.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord testifies that the deal to sell the rental unit fell through as the purchaser could not arrange finance. He states that the purchaser had gained finance approval which was later declined. The landlord feels he acted in good faith when he issued the tenant with the Two Month Notice to End Tenancy and the tenant had already moved out when the deal to sell the unit fell through.

The landlord disputes the tenants' claims that he suffered a loss of quiet enjoyment due to the viewings on the unit. He states that he gave at least 24 hours notice for each viewing and these notices also ask the tenant to inform the landlord if any day or time is not suitable so they could be rescheduled.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlord did not return the tenants security deposit within 15 days pursuant to section 38 of the Act. Therefore the tenant is entitled to double his security deposit. As the landlord did return the original amount of security deposit plus accrued interest on July 20, 2009, 20 days after receiving the tenants forwarding address I find the tenant is entitled to a Monetary Order to the amount of \$775.00.

In regards to the Two Month Notice to End Tenancy issued on May 28, 2009, I find the reasons the landlord gave on this notice did not take effect and the landlord issued the notice prematurely to all the conditions of sale having been completed. The conditions of sale should have been completed before the notice to end tenancy was issued to the tenant. As the sale of the rental unit fell through after the tenant had already vacated the rental unit the notice could not have been rescinded. Therefore, I find the tenant is entitled to compensation equivalent to two months rent pursuant to section 51 of the Act to an amount of \$3,318.40.

With regard to the tenants claim against the landlord for a loss of quite enjoyment, I find the landlord did give the tenant the required notices to enter the property pursuant to section 29 of the Act. A tenant must be expected to act reasonably when a landlord is trying to sell his



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

property and should not hinder this process. The landlord did give the tenant opportunity to reschedule any of the viewings to a more suitable time or date and the tenant did not do so. I find therefore the landlord did not act unreasonably in arranging these viewings with the tenant. The Residential Tenancy Policy Guidelines #6 state that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Therefore, I dismiss this section of the tenants' application without leave to reapply.

As the tenant has been largely successful with his application he is entitled to recover the \$100.00 filing fee from the landlord. A Monetary Order has been issued for the following amount:

Double the security deposit less the amount already paid to the tenant	\$775.00
Filing fee	\$100.00
Total amount due to the tenant	\$4,193.40

## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$4,193.40**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: November 12, 2009.

---

Dispute Resolution Officer