



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNL, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Although the tenant applied for an order setting aside a notice to end tenancy, I consider that claim to have been made in error as the tenancy had already ended at the time the tenant made his application for dispute resolution.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The undisputed facts before me are as follows. The tenancy began on March 1, 2005 and ended on April 3 or 5, 2010. At the outset of the tenancy the landlord collected security and pet deposits totalling \$1,275.00. On April 3, the tenant gave the landlord his forwarding address in writing.

The tenancy ended pursuant to a two month notice to end tenancy (the "Notice") given under section 49 of the Act. The notice alleged that the landlord or a close family member would be occupying the rental unit. Since the tenancy ended, the rental unit has been demolished and a new home is being constructed in which the landlord intends to live. The tenant testified that prior to the end of the tenancy he had a suspicion that the landlord would be demolishing the rental unit.

The tenant seeks an award for double his security deposit pursuant to section 38 of the Act and two month's compensation pursuant to section 51 of the Act.

### Analysis

Section 38(1) of the Act provides that the landlord must return the security and pet 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. I find the landlord received the tenant's forwarding address on April 3 and I find the landlord failed to repay the deposits or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security and pet deposits.

The landlord currently holds deposits totaling \$1,275.00 and is obligated under section 38 to return this amount together with the \$45.13 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit. I award the tenant \$2,595.13.

The Notice clearly states that the landlord or a close family member intends to reside in the rental unit. The parties agreed that the rental unit has been demolished. I find that in these circumstances it is appropriate to apply my discretion under section 68 of the Act which permits me to amend a notice to end tenancy if the party receiving the notice knew or should have known the information that was omitted from the notice. The tenant testified that he had a suspicion that the landlord would demolish the rental unit and I find that the tenancy still would have ended even if the landlord had checked the proper box on the Notice. I find that this is a clear case of the landlord having made an error which did not result in any prejudice to the tenant as the tenant would still have been required to vacate the unit even if the proper box had been checked. I find that it would be inequitable for the tenant to be rewarded for an error that had no impact on the final outcome. I hereby amend the Notice to indicate that the landlord intended to

demolish the rental unit and I find that the tenant is not entitled to compensation pursuant to section 51 of the Act. The claim is dismissed.

I find that the tenant is entitled to recover one half, or \$50.00, of the filing fee paid to bring his application and I award the tenant that sum.

Conclusion

I grant the tenant a monetary order under section 67 for \$2,645.13. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: September 01, 2010

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Dispute Resolution Officer