



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNSD, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit retained by the landlord and a monetary order for the equivalent of one-month compensation for a Notice issued under section 49 of the Act to end the tenancy for landlord's use and the \$100.00 cost of filing this application.

Both parties appeared and gave testimony during the conference call.

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

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.
- Was the tenant credited with the equivalent of one month compensation pursuant to section 51(1) after being issued the Notice to End Tenancy for Landlord use?

The burden of proof is on the applicant to show that the deposit was paid and that the forwarding address was given.

### **Background and Evidence**

The tenancy began on May 1, 2009 as a one-year fixed term expiring on February 28, 2010, after which it was to convert to a month-to-month tenancy. The rent was \$4,000.00 per month and a security deposit of \$2,000.00 was paid. A copy of the tenancy agreement and communications between the parties were in evidence.

The landlord issued a Notice to End Tenancy for Landlord's Use on April 28, 2010 with effective date of August 1, 2010. On April 30, 2010, the tenant gave written notice to vacate on May 15, 2010. The tenant's Notice contained a request for the return of the \$2,000.00 security deposit and the tenant's post-dated cheques and a request for one-

month compensation as required under the Act. In addition, a commitment was made by the tenant to pay half a month for occupancy from May 1, 2010 until May 15, 2010. The tenant had provided the landlord with their written forwarding address on May 15, 2010. The security deposit was not returned by the landlord and no application for dispute resolution was made by the landlord seeking to keep the deposit. The above facts were not in dispute.

The tenant testified that the landlord failed to comply with the Act by compensating the tenant the equivalent of one-month rent to which the tenant is entitled under the Act when a Notice to End Tenancy for Landlord Use has been issued. The tenant was seeking a monetary order for the \$4,000.00 payable under the Act.

The tenant testified that the landlord also failed to refund the security deposit and retained it without an order or written permission from the tenant to do so. The tenant is seeking double the security deposit in the amount of \$4,000.00.

The landlord testified that, from the beginning of this tenancy, both parties had agreed that either party was permitted to end the tenancy with only one month notice and without penalty. The landlord provided a copy of correspondence confirming this was part of the agreement. The landlord testified that despite being permitted under the contract to give only one month notice to end the tenancy, the tenant was actually provided with 3 months notice to vacate when the house was sold. The landlord testified that the tenant then violated their agreement by giving short notice on April 30 to vacate effective May 15, 2010 and the tenant also failed to pay rent for the month of May. The landlord testified that the landlord then applied the tenant's \$2,000.00 security deposit towards the debt for rent owed. The landlord testified that the tenant had also left substantial damage to the rental unit in the amount of \$6,781.52.

### **Analysis**

In regards to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the tenant's written forwarding address has been received, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

The Act states that the landlord can only retain a deposit if, at the end of the tenancy, the tenant has agreed in writing that the landlord will keep the deposit to satisfy a liability or obligation of the tenant. The landlord can also retain the deposit if the landlord has obtained a monetary order to keep the deposit for rent or damages.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenant's security deposit being held was \$2,000.00 and that under the Act the tenant is entitled to a refund in the amount of \$4,000.00 representing double the deposit.

In regard to the tenant's claim for one month compensation in the amount of \$4,000.00, I find that section 51(1) requires that a tenant receive the equivalent of one month compensation by the landlord when a Notice to End Tenancy for Landlord Use has been issued. I find that the landlord did not comply with the Act in this respect.

The landlord argued against the tenant's entitlement to this compensation based on the terms of the tenancy agreement or contract between the parties. In fact, I find that section 6 of the Act does state that rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement . (my emphasis)

Section 58 of the Act also states that, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities. (my emphasis)

While the tenancy agreement between the parties can be enforced under the Act, section 5 of the Act prohibits the parties from avoiding or contracting out of the Act or the regulations and this section specifically states that any attempt to avoid or contract out of the Act or the regulations is of no effect. (my emphasis)

Section 6(3)(a) of the Act also states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations. Accordingly I find that, regardless of what was mutually agreed-upon by the landlord and tenant, the Act must be followed in regard to the required one-month compensation owed to a tenant under section 51 of the Act. I find that the parties were not at liberty to contract outside the provisions of the Act in this respect and the term in the contract between them requiring one-month notice without penalty therefore cannot be enforced.

Section 50 (1) of the Act states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 for landlord's use of property, the tenant is entitled to end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and by paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice. Note: A tenant's early ending notice under this section does not affect the tenant's right to receive, in addition, the required one month compensation under section 51.

In this instance I find that the tenant had given written notice to vacate earlier than the effective date on the landlord's notice and vacated in mid-May. I find that the tenant would therefore only be required to pay for the portion of the month during which the tenant had physically resided in the rental unit. I find that the tenant's rent for half of May would be \$2,000.00 representing payment of one-half a month's rent. Accordingly, I find that the tenant had already received \$2,000.00 from the \$4,000.00 compensation owed to the tenant by the landlord under section 51 of the Act. I find that, after deducting the \$2,000.00 owed by the tenant to the landlord for rent for occupancy during part of May 2010, the landlord must now pay the tenant the remaining compensation of \$2,000.00.

In regard to the landlord's own claim for damages, I am not able to hear nor consider a monetary claim by the landlord during these proceedings as the matter before me was convened to deal with the *tenant's* application under section 38 and 51 of the Act, and was not an application filed by the landlord. That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a formal claim for compensation for damages and loss pursuant to section 67 of the Act.

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$6,100.00 comprised \$4,000.00 for double the security deposit, \$4,000.00 equaling one-month compensation under section 51 of the Act reduced to \$2000.00 for the half a month rent owed to the landlord for may 2010, and the \$100.00 cost of this application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced 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: December 2010.

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Dispute Resolution Officer