



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNR MNSD FF  
                             MNSD FF

### Introduction

This hearing dealt with cross applications filed for dispute resolution by both the Landlords and the Tenant.

The Landlords filed to obtain a Monetary Order for unpaid rent, to keep the security deposit and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed to obtain a Monetary Order for the return of her security deposit and to recover the cost of the filing fee from the Landlords for this application.

The male Landlord and Tenant appeared, acknowledged service of each hearing package and receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to a Monetary Order as a result of that breach?
3. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, has the Tenant proven entitlement to a Monetary Order as a result of that breach?

### Background and Evidence

I heard undisputed testimony that the Tenant entered into a fixed term tenancy agreement with the previous owner of the property. The tenancy agreement was effective September 1, 2009 and was set to switch to a month to month tenancy after August 31, 2010. Rent was payable on the first of each month in the amount of \$750.00 and the Tenant paid a security deposit of \$375.00 on September 1, 2009.

The Landlords, as named in this dispute, purchased the rental property and title was transferred on February 26, 2010. The parties agreed to alter the existing tenancy agreement to list the current owners as the new Landlords as supported by the copy of the tenancy agreement provided in the Landlords' evidence.

The Landlord testified that he was told by the previous owner that the Tenant had to be out of the rental property by August 31, 2010 which is when the Landlords planned on occupying the property. He said the Tenant advised him that he had to issue her a 2 Month Notice to End Tenancy, which he did on May 25, 2010 with an effective date of August 31, 2010. The Landlord stated the Tenant did not pay rent for August 2010 so he has made his claim to keep the security deposit and recover the rest of the rent.

The Tenant testified and referred to the copy of the 2 Month Notice she submitted as evidence. She confirms she received the Notice in person from the male Landlord on May 25, 2010. She did not pay rent for August 2010 because this was her compensation for receiving the 2 Month Notice and having to move. She confirmed the Landlord had her forwarding mailing address at the time she vacated the property during the third week of August 2010. All previous rents were paid in full. She is seeking the return of her security deposit.

#### Analysis

I have carefully considered all of the testimony and evidence before me which included, among other things, a copy of the tenancy agreement and the 2 Month Notice to End Tenancy for Landlord's use.

#### **Landlord's application**

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 of the Act (2 Month Notice for Landlord's use) 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. Section 51(1.1) of the Act provides the tenant referred to in 51(1) may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

Based on the aforementioned, I find the Tenant, who was issued the 2 Month Notice, was entitled to withhold her rent for August 2010, as compensation for receiving the notice, pursuant to section 51(1.1) of the Act. Therefore the Landlord has failed to meet the burden of proof that he is entitled to monetary compensation for August 2010 rent and his claim is hereby dismissed, without leave to reapply.

The Landlord has not been successful with his application and therefore must bear the burden of the filing fee.

### **Tenant's application**

The evidence supports the tenancy ended August 31, 2010 and the Tenant provided the Landlords with her forwarding address on or before August 17, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than September 15, 2010. The Landlords filed their application September 27, 2010.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit. Based on the aforementioned, I find that the Tenant has met the burden of proof and I hereby approve her claim for the return of double her security deposit of **\$750.00** (2 x \$375.00) plus interest of \$0.00.

The Tenant has been successful with her application, therefore I award recovery of the **\$50.00** filing fee.

### **Conclusion**

The Tenant's decision will be accompanied by a Monetary Order of **\$800.00** (\$750.00 + 50.00).

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: January 31, 2011.

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Residential Tenancy Branch