



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, FF, O

### Introduction

This matter dealt with an application by the tenants to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), regulations or tenancy agreement, to recover double the security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the Act, and was sent by registered mail to the landlord on October 22, 2010. The landlord was deemed to be served the hearing documents on October 27, 2010, the fifth day after they were mailed as per section 90(a) of the Act. The landlord testifies that she did not receive the hearing documents until February, 10, 2011 as she had moved from her former address and the people residing there eventually tracked her down at work and gave her the hearing documents. The landlord testifies she sent her evidence in response to the tenant's documents the next day. The tenant did not receive the landlords' evidence before the hearing but declined an adjournment and states she wishes to proceed with the 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. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the tenants entitled to recover double the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this tenancy started on September 01, 2009. This was a fixed term tenancy due to expire on August 31, 2010 with the option of continuing on a month to month basis. Rent for this unit was \$1,295.00 per month and was due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$645.00 on August 28, 2009.

The tenant testifies that she gave the landlord their forwarding address by e-mail and has provided a copy of the e-mail which is dated September 20, 2010. The tenant states the landlord has not returned her security deposit within 15 days and therefore seeks to recover double her security deposit of \$1,290.00.

The tenant testifies that according to their tenancy agreement this was a fixed term tenancy until August 31, 2010. She states the landlord sent her an e-mail asking them to end the tenancy before the end of the fixed term. The tenant states the landlord then put a typed Notice on their door on June 26, 2010 informing them that their tenancy will end at the end of the fixed term.

The tenant states that as neither letter was on the correct form to end the tenancy she informed the landlord of this by e-mail and requested the landlord provide her with a Two Month Notice to End Tenancy on a legal form. The tenant states she did not receive a Two Month Notice from the landlord and did not receive a Canada Post registered mail card informing her she should collect a registered mail from the post

office. The tenant states she attempted to move out on July 31, 2010 but the unit they were due to move into fell through so she continued with her tenancy until August 31, 2010 as per the terms of her tenancy agreement and because this was the date the landlord told her she had to move out by.

The tenant seeks compensation of one months' rent due to the landlord not providing proper Notice to end the tenancy. The tenants also seek compensation equivalent to one months' rent for the stress caused to them by the landlord in them having to move out before they had found alternative accommodation.

The landlord agrees that she did give the tenants a typed notice to end the tenancy but after the tenant informed her that this was not proper notice she then sent the tenants a Two Month Notice to End Tenancy on the correct forms. This Notice is dated July 25, 2010 and states the tenants must vacate the rental unit by October 01, 2010 as the rental unit will be occupied by the landlord, the landlords spouse or a close family member of the landlord or the landlords' spouse.

The landlord testifies that this Notice was sent by registered mail on July 26, 2010 and she has provided a copy of the receipt in evidence. The landlord testifies that this was returned to her as it was uncollected by the tenants. The landlord testifies that the tenants informed her that they would be leaving the rental unit on August 01, 2010 however a few days before they were due to move out she received a telephone call saying their new place had fallen through and could they stay another month. The landlord agrees the tenants did vacate the rental unit on August 31, 2010.

The landlord testifies that she did not complete a move in condition inspection at the start of the tenancy but did offer the tenants an opportunity to do this with her but they declined as they told her everything was good. The landlord testifies that she did not complete a move out condition inspection with the tenants.

The landlord has provided a new address for service and the tenants have made a note of this.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The tenants have applied for the return of double the security deposit; however, the tenants did not give the landlord a forwarding address in writing, as required under section 38 (1) of the *Act*, prior to applying for arbitration. The tenants did give the landlord their forwarding address by e-mail however; this is not an accepted form of communication for providing a forwarding address under the *Act*.

Therefore at the time that the tenants applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

At the hearing the tenants stated that the address on the application for dispute resolution is their present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today February 14, 2011 and must either return the security deposit or file an application to keep it within 15 days of today's date pursuant to section 38 of the *Act*.

With regards to the tenants claim for a monetary order for money owed or compensation for damage or loss to the sum of \$2,590.00; the landlord argues that she served the tenants with a Two Month Notice to End Tenancy for the landlord's use of the property. Section 51 of the *Act* states:

### **Tenant's compensation: section 49 notice**

**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.*

In this instance the tenants did not receive the landlords Two Month Notice to End Tenancy but did end the tenancy on August 31, 2010 as per the landlords typed notice to end tenancy. The tenant argues that because the landlord did not provide a legal notice to end the tenancy and did eventually issue a two month notice to end the tenancy that they are entitled to one months' rent in compensation.

It is my decision that the landlord did issue a Two Month Notice to the tenants and sent this by registered mail and as such it is deemed to have been received five days after posting pursuant to section 90 of the Act. However, Section 50 of the Act states:

**Tenant may end tenancy early following notice under certain sections**

**50** (1) *If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] the tenant may end the tenancy early by*

*(a) 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*

*A notice under this section does not affect the tenant's right to compensation under section 51 of the Act, and by giving the tenants a two Month Notice the landlords are still obligated to pay the tenant the equivalent of one months' rent.*

In this instance I find the tenants did not give the landlord 10 days written notice to end the tenancy and moved out before the effective date of the notice. Therefore, the tenant's compensation for the Two Month Notice would be their rent for September, 2010 as no Notice to vacate was provided by them. Consequently the tenants claim for compensation of \$1,295.00 is dismissed.

The tenants also seek compensation of \$1,295.00 for stress in having to move out without having alternative accommodation organized. It is my decision that had the tenants picked up the registered mail after a notice card was left on July 28, 2010 they would have seen from the Two Month Notice that the tenancy did not have to end until October 01, 2010. Therefore, as the tenants failed to collect the registered mail they did not mitigate their loss by having another month to find alternative accommodation and this section of their claim is also dismissed.

As the tenants have been unsuccessful with their claim I find they are not entitled to recover the \$50.00 filing fee from the landlords.

### Conclusion

The tenant's application for the return of double their security deposit is dismissed with leave to reapply.

The tenant's application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee paid for their application are dismissed without leave to reapply.

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: February 15, 2011.

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Residential Tenancy Branch