



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for compensation owed for damage or loss, return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

This tenancy started in May, 2010 with rent of \$1600.00, the tenant paid a security deposit of \$800.00. On August 23, 2010 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant testified that on August 23, 2010 he had been served a 2 month notice to end tenancy for landlord's use of property and that on October 31, 2010 he vacated the rental unit. The tenant stated that the notice reflected that the landlord or a close family member would be occupying the property. Upon vacating the rental unit October 31, 2010 the tenant provided the landlord with his forwarding address in writing.

The tenant stated that the landlord had an old dresser in the garage and the tenant approached the landlord about letting a friend of his use it and the landlord said yes. On October 31, 2010 as the tenant was vacating the rental unit, the landlord asked where the dresser was and requested it back. The tenant does not recall he and the landlord ever discussing if the dresser would be returned to the landlord and the tenant made it very clear that he did not see the dresser as a part of his tenancy. A number of emails went back and forth between the tenant and landlord regarding return of the dresser to the landlord and return of the security deposit to the tenant. The last email communication shows an email from the landlord to the tenant dated November 18, 2010. The tenant verified that on November 24, 2010 when he served the landlord with the documents for this hearing he returned the dresser to the landlord and the landlord returned the tenant's \$800.00 security deposit in full. The tenant is seeking a monetary order for \$800.00 in return of double the security deposit per Section 38 of the Act.

The landlord testified that on October 31, 2010 as the tenant was vacating the rental unit they discovered that the dresser they had loaned the tenant was missing. The landlord stated that same day they requested return of the dresser and advised the tenant that they would be returning his security deposit in full. The landlord maintains that the tenant requested they not mail his security deposit to the post office box provided as a forwarding address but that he would like the landlord to hang on to the security deposit until he returned the dresser; the tenant denies this. The landlord stated when they did not hear from the tenant for two weeks they initiated contact with the tenant by email. The landlord stated they tried numerous times to arrange a time for return of the dresser and to provide the tenant with his security deposit however on November 18, 2010 the tenant stopped responding to their emails. The landlord stated that on November 24, 2010 the tenant finally came to the property, served the landlord with the documents for this hearing, returned the dresser to the landlord providing the landlord the opportunity to return the tenant's security deposit in full.

The landlord testified that it was never their intention to contravene the *Act* or not return the tenant's security deposit and they thought that the tenant's continuing delays to return the dresser and pick up the security deposit were odd as the tenant comes to the north shore on a weekly basis.

The tenant testified that sometime in August/October 2010 he believed that the landlord removed his name and his guests name from the mailbox with the result that they no longer received their mail. The tenant stated that his guest requested that her mail be re-sent and it was still not received; the tenant 'believes' that the landlord interfered with their mail. The tenant is seeking \$100.00 compensation for loss of peace and quiet enjoyment per Section 28 of the *Act*.

The landlord testified that they did not remove the tenant's name from the mail box nor have they ever tampered with mail addressed to the tenant or anyone staying with him. The landlord does not know why the tenant's guest did not receive her mail and they confirmed that they did intercept it. The landlord stated that they still forward mail for past tenants and do this as a simple courtesy.

On March 15, 2011 when the tenant was attempting to serve documents to the landlord he was able to verify that there were new tenants, not related to the landlord, occupying the rental unit. The tenant believes that it was never the landlord's intention to rent the unit to his daughter or use it as an office. The tenant is seeking two months compensation in the amount of \$3200.00 per Sections 49 & 51 of the *Act*.

The landlord testified that when they had provided notice to the tenant for landlord's use of property that their intention was, and still is, to have their daughter and her boyfriend move in. The landlord stated that their daughter is an autism therapist and as the landlords have a son who suffers from autism, their daughter living on the property is to allow for support to the family unit. The landlord stated that their daughter's boyfriend

had unexpected surgery on his knee in early November and as he is on crutches which made moving into the rental unit, which has many stairs impracticable.

The landlord stated that they left the rental unit unoccupied for 3 months in the hopes that their daughter and her boyfriend could move in however that did not happen to the serious nature and estimated recovery time of the boyfriend's injury. The landlord testified that they then rented the unit to tenants on a 6 month fixed-term lease at reduced rent so that at the end of the lease their daughter and her boyfriend would be ready and able to move in. The landlord maintains that if it had been simply their intention to get the tenant out of the rental unit and re-rent at a higher rate to new tenants, that is not what took place.

The tenant refutes much if not all of the landlord's testimony, maintains that much of the evidence the landlord submitted and testified to is false and believes this goes to the credibility of the landlord. Both parties voiced concerns about having received evidence late from one another.

### Analysis

Based on the documentary evidence and testimony of the parties I find that the landlords fully intended to comply with the *Act* and return the tenant's security deposit within 15 days per Section 38 of the *Act*. The landlords after being requested to hold the security deposit for the tenant then had to initiate contact with the tenant to attempt return the security deposit. The tenant in this hearing gave no valid reasons for the continued delays in picking up the security deposit and ceasing communication with the landlord. Therefore I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for double the security deposit and this portion of the tenant's application is dismissed without leave to reapply.

Based on the documentary evidence and testimony of the parties I find that the tenant has not met the burden of proving that the landlords interfered with the tenant's mail. The tenant 'believing' that the landlords interfered with the mail is not sufficient evidence to uphold the tenant's claim. The tenant did not witness the landlord taking mail or see any of his mail in the landlord's possession. Therefore I find that the tenant does not have entitlement to a monetary order for loss of peace and quiet enjoyment and this portion of the tenant's application is dismissed without leave to reapply.

Based on the documentary evidence and testimony of the parties I find that the landlords did intend, *in good faith*, to have their daughter and her boyfriend occupy the rental unit. The landlords left the rental unit empty for three months before finally renting the unit to tenants at a reduced rent, on a 6 month fixed term lease. The landlords stated that the intention is to have their daughter and boyfriend occupy the rental unit at the end of the tenants lease as at that time the hope is that the boyfriend will be able to access stairs. I do not find that the landlords obtained an unconscionable or undue

advantage by ending the tenancy and the landlords have actually incurred a financial loss due to the circumstances. Therefore I find that the tenant does not have entitlement to a monetary order for compensation under Section 49 and 51 of the *Act* and this portion of the tenant's application is dismissed without leave to reapply.

As the tenant has not been successful in his claim the tenant is not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The tenant's application is dismissed in its entirety 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: March 31, 2010

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Residential Tenancy Branch