



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit and pet deposit; and, Orders for the landlord to comply with the Act, regulations or tenancy agreement by compensating him for ending the tenancy for landlord's use of the property.

The landlord did not appear at the hearing. The tenant testified that he served the landlord with the hearing documents by registered mail. The landlord provided a written submission in response to the tenant's application and the tenant confirmed that he had received the landlord's three page response. The landlord's covering letter, provided to the Residential Tenancy Branch only, indicated the landlord would unlikely attend the hearing due to work obligations.

I was satisfied the landlord was served with notification of this hearing and I proceeded to hear from the tenant in the absence of the landlord. I considered the landlord's written submission in reaching this decision and provided the tenant to respond to the landlord's written submissions during the hearing.

### Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit and pet deposit?
2. Is the tenant entitled to compensation for the landlord ending the tenancy for landlord's use of property?

### Background and Evidence

The written tenancy agreement provides that the tenancy commenced June 15, 2009 and the tenant paid a 550.00 security deposit and a \$550.00 pet deposit. Despite the provision in the written tenancy agreement to pay rent on the 1<sup>st</sup> day of every month, the tenant testified that he paid his rent on the 15<sup>th</sup> day of every month since his tenancy started on the June 15<sup>th</sup>.

The tenant paid rent September 15, 2010 and vacated the rental unit October 15, 2010.

### **Security Deposit and Pet Deposit**

On November 25, 2010 the tenant picked up a cheque from the neighbour for a refund of \$700.00 of his security deposit and pet deposit. Upon receiving the \$700.00 cheque the tenant wrote the landlord a letter requesting the rest of his deposits and in that letter the tenant provided his new address in writing. The landlord returned the remainder of the deposits to the tenant approximately two weeks later.

### **Tenant's compensation**

On September 30, 2010 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice). The Notice has a stated effective date of December 1, 2010 and indicates the reason for ending the tenancy is because:

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant testified during the hearing that he initially gave the landlord verbal notice he would be vacating October 15, 2010; however, the landlord then requested he put the notice in writing as the landlord's realtor wanted written confirmation. The tenant testified that he gave the landlord a written notice on October 3 or 4, 2010 to confirm he was vacating the rental unit October 15, 2010. The tenant stated he did not make a copy of this notice.

The landlord's submissions indicate the tenant did not give written notice that he would be vacating the rental unit. The landlord also submitted that the tenant left possessions at the residential property and that this "agreement in principal" constitutes a partial rental of the property and the tenant is not entitled to compensation. The tenant responded to these submissions by stating that he forgot some possessions stored under the stairs and when the landlord asked that they be removed he did so. The tenant stated there was no agreement that he was to compensate the landlord for storage or that he was waiving his entitlement to compensation.

### **Analysis**

Having considered all of the evidence before me, I make the following findings with respect to the requests made by the tenant.

### **Security Deposit and Pet Deposit**

The Act requires that a landlord must pay a tenant double the security deposit and/or pet deposit when the landlord fails to comply with the requirements of section 38(1) of the Act. Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

Having considered the tenant's testimony, which was consistent with the landlord's written statements, I am satisfied the tenant received a full refund of his deposits within 15 days of providing the landlord with a forwarding address in writing. Therefore, I do not find the landlord violated section 38(1) of the Act and I do not award the tenant double the deposits.

### **Tenant's compensation**

Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation equivalent to one month's rent. The compensation may be in the form of one of the following:

1. financial restitution, where the landlord pays the tenant the equivalent of one month's rent on or before the effective date of the two month notice,
2. occupancy, where the tenant withholds the last month's rent and occupies the rental unit rent-free for that last month, or
3. a combination of both.

Under section 50 of the Act, a tenant who has received a notice to end tenancy for landlord's use may end the tenancy early by giving a written 10 day notice to end the tenancy on a date earlier than the effective date of the landlord's notice.

I was provided conflicting statements by the parties as to whether the tenant provided written notice to end the tenancy effective October 15, 2010. The landlord states in her written submission that the tenant had notified her that he would be moving before she sold the house but then indicated there were details surrounding this issue that she would not elaborate upon. However, the landlord submitted that she did not receive the tenant's notice to end tenancy in writing. In contrast, the tenant provided detailed verbal testimony that he provided a written document to the landlord on October 3 or 4<sup>th</sup> so that the landlord could provide confirmation to her realtor and that the written document he provided confirmed that he would be vacating the unit by October 15, 2010.

I have applied more weight to the tenant's verbal submissions than the landlord's written submissions as I was able to ask questions of the tenant to determine the veracity of the evidence. I could make no such determination of the landlord's written statements

alone. Therefore, I accept the tenant's version of events that he provided the landlord with at least 10 days of written notice that he would be ending the tenancy effective October 15, 2010 and that he did vacate the rental unit October 15, 2010 except for a few forgotten possessions that he retrieved later.

In light of the above, I find the tenant ended the tenancy October 15, 2010 pursuant to the requirements of the Act. Having heard the parties had a practice of paying and accepting rent on the 15<sup>th</sup> day of every month and the tenant last paid rent on September 15, 2010 I find the tenant entitled to compensation equivalent to one month of rent less one day of occupancy on October 15, 2010.

I calculate the tenant is entitled to compensation calculated as follows: \$1,100.00 x 29/30 days = \$1,063.33 and I award that amount to the tenant.

Given the tenant's relative success with this application, I award the tenant one-half of the \$50.00 filing fee paid for this application. The tenant is provided a Monetary Order in the total amount of \$1,088.33 to serve upon the landlord. The tenant may enforce payment in Provincial Court (Small Claims) as necessary.

### Conclusion

The tenant was partially successful in this application and has been provided a Monetary Order in the amount of \$1,088.33 to serve upon the landlord.

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: June 02, 2011.

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Residential Tenancy Branch