



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in June 2006 at which time the tenants paid a \$550.00 security deposit and ended on or about September 30, 2010. The tenants testified that they gave the landlords their forwarding address on September 30. The landlords testified that they received that address on or about October 10 in their mailbox.

The parties further agreed that on September 28, 2010 the tenants were served with a 2 month notice to end tenancy which stated that the landlord or a close family member intended to reside in the rental unit.

The landlord K.B. testified that immediately before he served the notice to end tenancy, he noticed that the tenants were in the process of packing their belongings. He stated that he spoke with the tenants who advised him that they weren't going to give him notice that they were moving and they weren't going to pay him rent.

K.B. further testified that he had intended for his mother-in-law to move into the rental unit but that she had a fall and her caregivers stated that she should not leave the hospital. The landlords re-rented the unit to an unrelated third party in February.

The landlord began to testify about damage to the rental unit and losses he believed he had suffered but I advised him that such testimony was irrelevant as he had not made a

claim for such damage and as claims of damage to the rental unit were not an effective defence to the tenants' claims.

### Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the tenants vacated the rental unit on September 30 and that the landlords received their forwarding address on October 10. I find the landlords failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the forwarding address and are therefore liable under section 38(6) which provides that the landlords must pay the tenants double the amount of the security deposit. I award the tenants \$1,100.00 as double the security deposit and a further \$18.30 in interest which has accrued to the date of this judgment.

Although the landlords may have intended that K.B.'s mother-in-law occupy the rental unit, this did not in fact happen.

Section 51(2) of the Act provides as follows:

51(2) In addition to the amount payable under subsection (1), if

51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

51(2)(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

This section does not grant me discretion to determine that there was a valid reason for the rental unit not having been used for the purpose stated on the notice to end tenancy but plainly states that if it is not used for that purpose, the tenants are entitled to compensation equivalent to 2 months' rent. I find that the landlord failed to use the rental unit for the purpose stated in the notice to end tenancy and that they are therefore liable under section 52(2) to pay the tenants \$2,400.00, which is double the \$1,200.00 per month rent the tenants paid at the end of the tenancy. I award the tenants \$2,400.00.

Conclusion

The tenants are awarded a total of \$3,518.30. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court 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: June 10, 2011

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Residential Tenancy Branch