



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MNDC*

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and for compensation pursuant to a notice to end tenancy for landlord use of property.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on April 19, 2011 and May 05, 2011. The tenant filed receipts with tracking numbers. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issue(s) to be Decided**

Is the tenant entitled to a monetary order for the return of double the security deposit? Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy began on May 01, 2010. The monthly rent was \$400.00. The tenant occupied the basement and prior to moving in; the tenant paid a security deposit of \$200.00. There was no written tenancy agreement. The tenant paid rent every month to the son of the landlord who lived upstairs.

On or about March 20, 2011, the landlord verbally gave the tenant notice to end tenancy effective end of April 2011. The landlord informed the tenant that she planned to conduct some repair work in the attic that involved the removal of asbestos. The landlord also notified the tenant of her intention to sell the house.

The tenant looked for accommodation immediately and found a rental unit available for the month of April. On March 30, 2011 the tenant informed the landlord that she would be moving out on April 04. Since the tenant's rent was paid directly to the landlord from the Ministry of Income assistance, the rent for April was paid at the time the tenant informed the landlord that she would be moving on April 04. The tenant requested the return of rent for April but the landlord refused to do so.

The tenant gave the landlord her forwarding address in writing on April 06, 2011 with a request to return the security deposit. The landlord told the tenant that she would not be returning the security deposit because the dishwasher in the rental unit was not in working order. The tenant stated that shortly after the tenancy ended, the landlord sold the house.

### **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 landlord failed to repay the security deposit in full, nor did she make an application for dispute resolution to retain a part of the security deposit within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

Based on the sworn testimony of the tenant and in the absence of evidence to the contrary, I find that the landlord currently holds a security deposit of **\$200.00** and is obligated under section 38 to return double this amount. Therefore the landlord must pay \$400.00 to the tenant.

The landlord gave the tenant verbal notice to end tenancy for landlord use of property. Had the landlord given the tenant notice to end tenancy in the required format, the tenant would have been entitled to compensation in the amount of one month's rent. The tenant would also have had the ability to move out with giving the landlord 10 days

notice to end tenancy. Based on the undisputed testimony of the tenant and the fact that the unit did sell, I find that the landlord gave the tenant notice to end the tenancy for landlord's use of property. The tenant moved out April 04, 2011 after having paid rent for April. Since the landlord did not give the tenant the notice in the approved format, I will not order the landlord to compensate the tenant pursuant to a notice to end tenancy for landlord's use of property. However, I find that the landlord must return prorated rent for the month of April to the tenant in the amount of **\$346.58**.

The tenant has proven her case and is entitled to the filing fee of **\$50.00**.

Overall the tenant has established a claim as follows:

1.	Return of security deposit	\$400.00
2.	Return of prorated rent	\$346.58
3.	Filing fee	\$50.00
	Total	<b>\$796.58</b>

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for \$796.58. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order for **\$796.58**.

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: July 26, 2011.

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Residential Tenancy Branch