



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and his agent.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit; for compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began in March 2005 as a month to month tenancy for a monthly rent of \$1,400.00 due on the 1<sup>st</sup> of each month with a security deposit of \$700.00 paid on or before March 1, 2005.

The tenancy ended on May 1, 2011 as a result of the landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use of Property citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The parties agree the tenant returned the keys and provided the landlord with her forwarding address in early May, 2011. The landlord's agent stated that her records show it was received on May 6, 2011, the tenant was unsure of the exact date. The landlord's agent confirmed they did not have the tenant's permission, in writing, to retain the security deposit.

The parties agree the landlord provided the tenant with a cheque dated May 19, 2011 for \$150.00 and the landlord states they retained \$500.00 for garbage removal and \$50.00 for "handling". The tenant acknowledges that she received and cashed the cheque from the landlord.

The landlord acknowledges that after the tenant moved out of the rental unit the landlord's agent cleaned the rental unit and that in June 2011 the landlord began renovation work on the rental unit. The landlord also stated that the landlords were out of the country for the months of July and August and that no work was done while they were away. The landlord states there is about a month's worth of work left before they can move in.

The tenant pointed out that she had seen, through the windows, that there was a brand new kitchen in the basement, even though when the tenant was renting it she rented the full house and that despite having a separate rental unit in the basement prior to her tenancy it was not separate when her tenancy ended.

The landlord testified that the reason for the basement kitchen was for when their parents would visit the parents would stay in the basement unit, separate from the rest of the landlord's family.

### Analysis

Section 38(4) states that the landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. I accept the landlord did not have the tenant's agreement to retain any portion of the security deposit.

Section 38(1) of the *Act* stipulates that the landlord must, within 15 days of the end of the tenancy and receipt of the tenants forwarding address, return the security deposit to the tenant or file an Application for Dispute Resolution to claim against the security deposit for any damage or loss the landlord may have incurred.

I accept the tenancy ended on or before May 1, 2011 and that the tenant provided her address in writing to the landlord on May 6, 2011. To be compliant with Section 38(1) the landlord would have to return the full security deposit and interest to the tenant no later than May 21, 2011.

Section 38(6) goes on to say that should the landlord fail to comply with Section 38(1) she must pay the tenant double the amount of the security deposit held.

Based on the above, I find that as the landlord failed to return the full deposit and interest to the tenant or file an Application for Dispute Resolution to claim against the deposit prior to May 21, 2011, the landlord has failed to comply with Section 38(1).

In regard to the tenant's Application for compensation as the landlord has failed to use the rental unit for the stated purpose, Section 51 of the *Act* states that if steps have not been taken to accomplish the stated purpose for end the tenancy within a reasonable period after the effective date of the notice.

Upon consideration of the tenant's position that if the landlord intended to renovate the house he should have ended the tenancy because he had all the necessary permits and approvals required by law, I find there is nothing in the *Act* preventing the landlord from making renovations to the residential property prior to using it for the stated purpose.

I note that had the landlord not left the country for 2 months the landlord may have, based on their testimony, completed all the renovations and moved into the rental unit by the time of this hearing.

As the test that must be met is one of reasonableness in terms of the time taken to prepare the house for the landlord's use, I find based on the landlord's circumstances it is still reasonable to expect the landlord may move in to the property within a reasonable time.

As such, I find that it is premature at this time to determine if the landlord has failed to use the property for the stated purpose in the Notice to End Tenancy. Based on the landlord's testimony, I find that a reasonable timeframe for the landlord to use the property for its stated purpose would be within 2 months from the date of this hearing.

I therefore dismiss this portion of the tenant's claim with leave to reapply at the end of that period should she believe the landlord has not fulfilled the requirements of the notice.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,324.79** comprised of \$1,400.00 double the security deposit; \$24.79 interest on the security deposit held and the \$50.00 fee paid by the tenant for this application less the \$150.00 already returned security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: September 07, 2011.

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Residential Tenancy Branch

