



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of their security deposit, for compensation pursuant to section 51 of the Residential Tenancy Act (the Act) in respect to a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued by the Landlord on February 21, 2011, and recovery of the filing fee.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form and to make submissions and respond each to the other.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act (the "Act")*?

### Background and Evidence

Although no tenancy agreement was entered into evidence, the unopposed testimony of the parties is that this month to month tenancy officially began on November 1, 2009, the tenants moved in on November 15, 2009, ended on April 1, 2011, that monthly rent was \$1,250.00, and a security deposit of \$625.00 was paid by the tenants prior to the tenancy, on or about October 15, 2009.

The tenants have applied for a monetary order in the amount of \$3,800.00, which includes \$1,250.00 for a return of their security deposit, doubled, \$2,500.00 for compensation equal to two months' rent as a result of receiving a 2 Month Notice to End the Tenancy from the landlord and \$50.00 for recovery of the filing fee.

The tenant testified the Notice caused the tenants to vacate the rental unit by April 1, 2011.

The tenant gave affirmed testimony that she provided the landlord their written forwarding address and requested a return of their security deposit in 2 letters sent via mail, on April 6 and on April 22, 2011. The landlord confirmed receiving both letters shortly afterwards and that he has not returned the tenants' security deposit.

The tenant further testified that after the tenants requested repairs to the rental unit, the landlord became angry and issued a 2 Month Notice to End the Tenancy for Landlord's Use, with an effective move out date of April 30, 2011.

For reason the Notice stated that the landlord, that is a family corporation, is ending the tenancy due to a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant submitted that shortly after the tenants moved out, the landlord listed the rental unit for rent and as evidence, submitted copies of the advertisements. The tenant stated that she noticed the first advertisement on April 15, then on April 20, and again on April 22, 2011.

The landlord acknowledged that he has not filed for Dispute Resolution, nor had the tenants' written permission to withhold any amount. However, the landlord submitted that they were entitled to keep the security deposit due to the rental unit being a "complete mess."

The landlord further submitted, in support of the Notice, that his partner's son intended to live in the rental unit, but refused after viewing the rental unit at the end of the tenancy.

Upon query, the landlord stated that his business partner was his friend and owned 50% of the company.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In order to justify payment of loss under section 67 of the *Act*, the Applicant tenants bear the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence and testimony of the tenant and the landlord's confirmation substantiates that the tenant provided the landlord with their written forwarding address in two letters sent on April 6 and April 22, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. [Emphasis added]

The landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing them to keep the security deposit, and does not have the tenants' written consent to retain the security deposit.

Based on the above, I find that the landlord failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. [Emphasis added]

I therefore find that the tenants have established a **monetary claim** in the amount of **\$1,250.00** for return of their security deposit, doubled.

Section 51 of the Residential Tenancy Act provides if steps have not been taken to accomplish the stated purpose for ending the tenancy listed on the Notice under section 49 within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find upon a balance of probabilities that the landlord did not take steps to accomplish the stated purpose for ending the tenancy. The landlord submitted no evidence or credible testimony that the rental unit was left in such a state that his partner's son could not move into the rental unit.

Rather I find it the tenants' undisputed evidence of the landlord placing the rental unit on the market shortly after the end of the tenancy makes me conclude that the landlord issued the Notice for the purpose of illegally evicting the tenants.

In reaching this conclusion, I was further persuaded by the landlord's failure to provide convincing testimony or evidence, with one example being that the landlord could not provide the name of his partner's son upon my query.

I therefore do not find the testimony and evidence of the landlord is credible and that on a balance of probabilities an ulterior motive existed whereby the landlord ended the tenancy.

I therefore find the tenants have established a **monetary claim** in the amount of **\$2,500.00** as compensation under Section 51 of the Act.

Even had I not found that the landlord had not taken steps to accomplish the stated purpose, I would still grant the tenants' application, as the listed landlord is not a family corporation, as defined under section 49 (1) of the Act.

As the tenants were successful with their application, I allow them recovery of the filing fee, in the amount of \$50.00.

#### Conclusion

Pursuant to Section 67 of the Act, I find that the tenants are entitled to a **monetary order** in the amount of **\$3,800.00**, comprised of the tenants' security deposit, doubled, in the amount of \$1,250.00, \$2,500.00 representing the amount of \$1,250.00 monthly rent, doubled, as compensation under section 51 of the Act, and the \$50.00 fee paid by the tenants for this application.

I am enclosing a Monetary Order for \$3,800.00 with the tenants' Decision. This Order is a **final, legally binding Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this Monetary Order.

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: October 04, 2011.

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Residential Tenancy Branch