



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for return of all or part of the pet damage deposit or security deposit.

The landlord and the tenant attended the hearing, gave affirmed testimony and were given the opportunity to cross examine each other. The parties both provided evidence in advance of the hearing, however the landlord provided an evidence package the day of the hearing to the Residential Tenancy Branch but did not provide a copy to the tenant. All evidence and testimony, with the exception of the landlord's evidence that was not provided to the tenant, has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to a monetary order for recovery of the pet damage deposit or security deposit?

### Background and Evidence

This tenancy began as a fixed term tenancy on February 1, 2009 to expire on January 31, 2011, and then reverted to a month-to-month tenancy which ultimately ended on September 30, 2011. Rent in the amount of \$1,300.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$637.50. A move-in condition inspection report was completed by the parties at the outset of the tenancy, but no move-out condition inspection report was completed at the end of the tenancy.

The tenant testified that a new rental unit had been found after the landlord had served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant mailed a letter with 10 days notice to the landlord of the tenant's intention to vacate on September 19, 2011 by registered mail, which also contained the tenant's forwarding address. The tenant was not offered 1 month's rent as compensation.

The tenant further testified that the tenant was interested in a long-term tenancy at the outset, and the landlord offered to sell the rental unit to the tenant.

The landlord had provided the tenant with a document to sign which would bind the tenant to move out on a specific date without any compensation. The document was a Mutual Agreement to End Tenancy, but the tenant did not sign it. The landlord emailed the tenant stating that the landlord would send compensation, then emailed again saying that the tenant was not legally entitled, then another saying that only part of the security deposit, \$492.50 would be returned, but the tenant never received that. The tenant thought the landlord had changed her mind.

The tenant provided a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property that was served by the landlord. The notice is dated August 29, 2011 and contains an expected date of vacancy of October 31, 2011. The reason for ending the tenancy is stated to be "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 also provided a copy of the letter sent to the landlord dated September 19, 2011 which gives 10 days notice and a forwarding address. The letter also requests \$1,300.00 for compensation and return of the security deposit in the amount of \$637.50.

The tenant claims one month's rent as compensation and double the amount of the security deposit for a total of \$2,575.00.

The landlord testified that the parties had agreed to a 2 year lease to expire on January 31, 2011 and then to continue on a month-to-month basis. The tenant was offered to purchase the rental unit at below market value, but the tenant did not respond to the landlord's offer so the landlord listed the rental unit for sale.

The landlord further testified that the mortgage on the rental unit was expiring on October 1, 2011. A buyer had offered full price but the offer fell through because a stain existed on the ceiling in the laundry area, which would have been repaired by the strata,

but the tenant never told the landlord about it. The landlord then received a second offer, but had to make the repairs and waiting for the strata to do it may have affected the sale. The purchaser wanted to move in on October 1, 2011 but the tenant wasn't agreeable to moving by then. The closing date then had to be changed and the landlord lost money by having to pay an additional portion of the property taxes, strata fees and re-negotiate a new mortgage.

The landlord also testified that a cheque was sent to the tenant in the amount of \$276.00. The landlord also emailed the tenant attaching an invoice in the amount of \$869.65 for 2 track lights that were not replaced by the tenant and for the replacement of a broken kick plate on the dishwasher.

The landlord felt tricked by the tenant. The landlord would have had a full price sale if the tenant had disclosed the stain on the ceiling to the landlord. Then the second offer cost the landlord money because the tenant was not prepared to move by October 1, 2011, then the tenant moved out on September 30, 2011 anyway. The landlord's loss is a 5 digit figure, and the tenant caused the collapse of the full price offer and needlessly caused the landlord further expense.

The landlord received the tenant's forwarding address in writing on September 28, 2011.

### Analysis

The *Residential Tenancy Act* requires a landlord to give a tenant at least 2 month's written notice to vacate a rental unit if the purchaser has requested it in writing so that the purchaser or a close family member of the purchaser can reside in the rental unit. The landlord is also required under the *Act* to provide the tenant with moving expenses which are the equivalent of one month's rent. The *Act* also states that once a tenant is served with the landlord's notice, the tenant can give the landlord 10 days written notice of the tenant's intention to vacate earlier and the landlord is still required to provide the tenant with the equivalent of one month's rent.

The *Act* also states that a landlord has 2 options with respect to a security deposit: pay it back to the tenant or apply for dispute resolution claiming against it. In either case, the landlord must act within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. In this case, the landlord testified to receiving the tenant's forwarding address in writing on September 28, 2011 and the tenancy ended on September 30, 2011. Therefore, the landlord had until October 15, 2011 to return the security deposit in full or claim against it. The *Act* states that if a

landlord fails to do either, the landlord must pay the tenant double the amount of the security deposit.

In the circumstances, I accept the testimony of the landlord that the sale of the rental unit was complicated by the fact that the tenant stated she couldn't move out by October 1, 2011 and then moved out on the 30<sup>th</sup> of September instead. That may have caused the landlord to incur more expenses, but I find that the tenant has not failed to comply with the *Act*. Whether the tenant moved out on September 30, 2011 or October 31, 2011, the landlord is still required under the *Act* to provide the tenant with the one month's compensation.

The landlord also testified that damages existed at the end of the tenancy, such as track lighting and the kick plate on the dishwasher. If the landlord had a claim for damages, the landlord would have to make an application for dispute resolution claiming against the security deposit for the cost of repairs. However, because the landlord did not cause a move-out condition inspection report to take place, the landlord's right to claim against the security deposit for damages is extinguished, and because the landlord did not return the security deposit within 15 days, the landlord is required to pay the tenant double.

In summary, I find that the tenant has established a claim for double the amount of the security deposit and one month's rent as compensation for the tenancy ending as a result of the sale of the property.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,575.00.

This order is final and binding on the parties and may be enforced.

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 10, 2012.

---

Residential Tenancy Branch