



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

Many of the facts are not in dispute. The tenancy began in January 2009 at which time a \$550.00 security deposit was paid. In January 2012, the tenant was served with a 2 month notice to end tenancy which stated that the landlord or a close family member intended to occupy the rental unit. The notice set the end of tenancy date at March 31, 2012. The tenant did not pay rent in the month of March in compensation for having been served a notice under section 49 of the Act and he vacated the unit on April 20.

The tenant claimed that on April 20, he personally handed the landlord a letter which contained his forwarding address. The landlord denied having received the letter.

The parties agreed that the rental unit was demolished in June. The landlord testified that he married in June and had intended to renovate and move into the rental unit, but found that it was in such poor condition, he chose to demolish and rebuild it instead. He stated that it is still his intention to reside in the unit when it is rebuilt.

The parties agreed that throughout 2010, the unit had been listed for sale but had not sold. In March 2012, the landlord again listed the property for sale. He claimed that his intention had been to live in the unit for 6 months and sell it at the end of that period. He testified that when the unit is rebuilt, he intends to reside therein and sell it after a short period.

### Analysis

Section 51(2) of the Act provides that the landlord must pay the tenant the equivalent of double the monthly rent if after having ended the tenancy pursuant to a section 49 notice the landlord fails to take steps to accomplish the stated purpose for ending the tenancy or fails to use the rental unit for the stated purpose for at least 6 months beginning within a reasonable period after the effective date.

The notice stated that the landlord intended to occupy the rental unit. Had the landlord intended to occupy the unit, I find it likely that he would have ascertained the condition of the unit prior to making that decision. The landlord should have been aware that the rental unit was an older home and had he believed that demolition was required, he could have served a notice indicating that demolition was his intent.

I find that the landlord's actions are inconsistent with his claim that he intended to occupy the rental unit. I find it unlikely that he would list the unit for sale if he intended to occupy it for a considerable period of time and I further find it unlikely that he would not have known the condition of the home prior to regaining possession of it on April 20. The landlord insinuated that the tenant in some way caused the home to deteriorate to the point that it needed to be demolished, but the landlord's photographs simply show an older home which required some cleaning.

I find that the landlord has not taken steps to occupy the rental unit within a reasonable period and I find that the tenant is entitled to an award of double his monthly rent. I award the tenant. \$2,200.00.

As the landlord has denied having received the tenant's forwarding address on April 20 and as the tenant provided no evidence to corroborate his claim that he gave the landlord his forwarding address on that day, I find that the landlord did not receive the address on April 20. I find that the tenant's application for the return of double his security deposit is premature as the landlord's obligation to deal with the deposit is not triggered until he has received the forwarding address in writing.

At the hearing, the tenant confirmed that the address on his application for dispute resolution is his forwarding address. The landlord will be deemed to have received the forwarding address on August 15, which is 5 days after the date of this decision, and must either make a claim against the deposit or return it in full no later than August 30, 2012. The tenant's claim for the return of the deposit is dismissed with leave to reapply.

As the tenant has been partially successful, I find that he is entitled to recover the \$50.00 filing fee paid to bring his application.

Conclusion

The tenant is awarded a total of \$2,250.00. His claim for the return of the security deposit is dismissed with leave to reapply.

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: August 10, 2012

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Residential Tenancy Branch