



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to return the Tenant’s property – Section 65.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord did not attend the Hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

At the onset of the hearing, the Tenant clarified that the application indicating a dispute of an additional rent increase was made in error as this selection was marked in relation to the Notice to End Tenancy that is one of the matters in dispute. I accept this error and find that the application does not include a request to dispute an additional rent increase. The Tenant requested an amendment to the application to withdraw all the claims other than the monetary claims in relation to the Notice to End Tenancy and the return of the security deposit. As the Landlord has not appeared at the hearing, I find that there is no prejudice to the Landlord in granting the amendment and the amendment is therefore granted.

### Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on March 1, 2012 and ended on September 1, 2012. Rent of \$1,350.00 was payable monthly and at the outset of the tenancy the Landlord collected \$675.00 as a security deposit. Neither a move-in nor move-out inspection was offered or conducted by the Landlord. On July 25, 2012 the Tenant received a Two Month Notice to End Tenancy for Landlord's Use (the "Notice") with a stated effective date of September 25, 2012. The Notice sets out the following reason: "that 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 Tenants found another unit to rent and moved out before the effective date of the Notice. The Landlord provided a reference for the Tenants for their new tenancy and while the Tenants were in the process of moving out of the unit, the Landlord posted a notice on the unit advertising the unit for rent at a rate of \$1,650.00. In early September 2012 the Tenant drove by the unit and saw that it was occupied by new tenants. The Landlord failed to provide the Tenant with the one month rent compensation and failed to return the security deposit to the Tenants. The Tenants claim one month's rental compensation for the Notice, two months' rental compensation for the failure of the Landlord to use the unit for the purpose indicated in the Notice and return of double the security deposit. The Tenant states that a forwarding address was provided to the Landlord as the Landlord knew where the Tenants had moved to and it is noted that the Tenants' forwarding address is also included in the application served on the Landlord by registered mail on September 24, 2012.

### Analysis

Section 51 of the Act provides that a tenant who receives a notice to end tenancy for landlord's use is entitled to receive from the landlord on or before the effective date of the notice an amount that is the equivalent of one month's rent. Based on the Tenants' undisputed evidence, I find that the Landlord failed to provide the Tenants with a

month's rent and that the Tenants are therefore entitled to a monetary amount of **\$1,350.00.**

Section 51 further provides that in addition to the amount payable noted above, if the Landlord has not taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if the unit is not used for that stated purpose for at least 6 months beginning 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. Although the Tenant provided undisputed evidence that the Landlord immediately rented the unit to other tenants at a higher rental rate, upon reflection, and as only approximately one month has passed since the effective date of the Notice, I find that the Tenants' claim is premature as the Landlord could still meet the purpose of the Notice within a reasonable time period that I take to be longer than one month, in these circumstances where the Tenant left a month earlier than the effective date. As such, I dismiss this part of the application with leave to reapply.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$1,350.00**. Although the Tenants did not claim an amount equivalent to double the security deposit on the application, the Tenants did not waive the entitlement contained in the Act and I find therefore that the Tenants are entitled to return of double the security deposit.

#### Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$2,700.00**. If necessary, this order may be filed in the Small Claims Court and 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: November 5, 2012.

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Residential Tenancy Branch