



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AWM Alliance Real Estate Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### 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. An Order for return of the security deposit - Section 38;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began in approximately 1996 and ended on March 31, 2012 pursuant to a 2 month notice to end tenancy for landlord’s use (the “Notice”). The reason for the Notice was that “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 states that the Landlord knew where to send his security deposit, that the Landlord did not return the security deposit and that he did not send a forwarding

address in writing until provided in the body of the application. It is noted that the application was made on December 18, 2012. The Landlord states that they did not return the security deposit as they were waiting for a written forwarding address. The Landlord states that they did not consider the address provided by the Tenant in the body of the application as the forwarding address for the purposes of returning the security deposit. The Landlord states that they were waiting for the outcome of this hearing before returning the security deposit.

The Tenant states that the rental unit was never occupied by the purchasers and that the unit was demolished on July 2012. The Tenant states that the unit was on a double lot and that there are now two new houses on that lot. The Tenant states that he is aware of what occurs at the unit as he works for a client next door and drives by almost daily. The Landlord states that they sold the unit to the purchaser who stated in writing their good faith to occupy the unit and that the Landlord has no way of making determinations if that good faith intent was followed through. The Landlord provided evidence of the written statement from the purchasers of their good faith intention to occupy the unit.

### Analysis

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. The requirement of a tenant's forwarding address in writing seeks to balance the right of a tenant to return of security monies in a timely fashion and the right of the landlord to make claims against the Tenant for damages. In order to make such claims, the landlord must have the address of the tenant for service purposes.

As the Tenant's address for service was obtained by the Landlord when served with the Tenant's application for dispute resolution and provided the Landlord with the

opportunity to make an application against the Tenant for any damages, I find that the Tenant's requirement under section 38 of the Act to provide a forwarding address in writing was substantively met and that the Landlord failed to return the security deposit within 15 days of that date. Using January 1, 1996 as the date to calculate interest on the security deposit, I find that the Landlord must return double the security deposit of \$550.00 plus \$91.16 interest for an entitlement of **\$1,191.16** ( $\$550.00 \times 2 + 91.16$ ).

Section 51 of the Act provides that if:

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As the purchaser provided the good faith intention to occupy the unit pursuant to the Notice given under section 49, I find that the Tenant does not have a claim against the Landlord for the amount payable pursuant to section 51. I therefore dismiss the claim against the Landlord and give the Tenant leave to reapply against the purchaser.

As the Tenant has otherwise been successful with its application, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,241.16**

### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,241.16**. 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: March 14, 2013

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Residential Tenancy Branch

