



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD, MNDC, MNR, FF

### **Introduction**

The hearing was convened to deal with an application by the tenant for the return of double the security deposit under the Act and compensation owed because the landlord had issued a Two Month Notice to End Tenancy for Landlord's Use and the tenant left earlier than required. The tenant was also seeking reimbursement for the \$50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$1,014.68 for pro-rated rent for the period from October 15 to November 2, 2012, accrued utility arrears owed and reimbursement for the \$50.00 fee paid for the application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence properly served, but only evidence that is relevant and material to the issues under dispute are described in this decision.

### **Issues to be Decided for the Tenant's Application**

Is the tenant entitled to double the security deposit under section 38 of the Act?

### **Issues to be Decided for the Landlord's Application**

Is the landlord entitled to compensation under section 67 of the Act?

### **Background and Evidence**

The tenancy began on March 15, 2012 with rent of \$900.00 due on the 15<sup>th</sup> day of each month. A security deposit of \$450.00 was paid. The landlord issued a Two Month Notice to End Tenancy for Landlord's Use and served it on the tenant by August 30, 2012. The effective date ending the tenancy was shown as "October 15, 2012".

The landlord testified that the tenant failed to pay rent due on October 15, 2012 but still remained in the unit beyond that date and did not move out until November 2, 2012. The tenant acknowledged nonpayment of rent on October 15, 2012. The tenant stated that he actually moved out on November 1, 2012.

The landlord testified that they had received the tenant's written forwarding address by October 15, 2012, but did not refund the tenant's security deposit because they believed that the tenant still owed half a month rent for the period from October 15, 2012 to November 1, 2012, and they, therefore, allocated the deposit towards the tenant's debt. The landlord acknowledged that the tenant never gave written consent at the end of the tenancy allowing the landlord to keep the security deposit.

The landlord is claiming utility arrears based on the tenancy agreement and pointed out that the agreement confirms that hydro is not included in the rent. A copy of the agreement was in evidence but contained no details about how the utility payments were to be paid. The landlord testified that, although this was not documented in detail, the tenant agreed to pay the landlord 1/3 of each utility invoice. The landlord testified that the tenant did not pay and is claiming utility arrears of \$474.68

The tenant disagreed with the utility claim being made by the landlord and the alleged rental arrears. The tenant pointed out that, under the Act, when a landlord issues a Two Month Notice to End Tenancy for Landlord's Use the tenant is exempt from paying the final month rent. The tenant stated that he had not stayed for the final month, from October 15, 2012 to November 15, 2012, but moved out on November 1, 2012.

The tenant testified the landlord failed to return the \$450.00 security deposit within fifteen days after being given the tenant's written forwarding address and the tenant is therefore seeking a refund of double the deposit, pursuant to section 38 of the Act.

### **Analysis: Tenant's Application- Security Deposit**

Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations OR
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord was in possession of the tenant's security deposit, held in trust on behalf of the tenant at the time that the tenancy ended. I find that because the forwarding address was provided shortly after the tenant moved out on November 1<sup>st</sup> or 2nd, 2012,

the landlord was required to either return the deposit, or, in the alternative, make an application for dispute resolution seeking to keep the deposit within the following 15 days. However, the landlord's application for dispute resolution was not processed until January 24, 2013, and this was clearly beyond the fifteen-day deadline.

Section 38(6) provides that, if a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the \$450.00 security deposit paid, for entitlement to a total refund of \$900.00.

### **Analysis: Tenant's Application Two-Month Notice To End Tenancy**

In regard to the tenant's claim for compensation based on the Two Month Notice to End Tenancy for Landlord's Use, I find that section 49 of the Act states that a landlord may end a tenancy for landlord use by giving notice to end the tenancy effective on a date that must be:

- (a) not earlier than 2 months after the date the tenant receives the notice, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. (my emphasis)

In this case, I find that the Notice to End Tenancy for Landlord's Use issued on August 28, 2012 purported to be effective October 15, 2012. Based on the Act, the earliest date that the Notice could be effective, is November 14, 2012, not October 15, 2012.

Section 53 (1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the Act, the effective date of the notice is deemed to be changed to the earliest date that complies with the section. In this instance, the effective date of the landlord's notice is deemed to be November 14, 2012. Therefore, I find that the tenant did willingly vacate on November 1, 2012 but was legally entitled to remain in possession of the unit until November 14, 2012.

In addition to the above, section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Act also states that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent.

I find that the tenant was entitled to a free month rent or a refund of \$900.00 under the Act. I find that this free month rent would be applicable to the period from October 15,

2012 until November 14, 2012. I find that the tenant withheld payment of rent for this final month, and thus was already credited with the amount of \$900.00 by the landlord.

A tenant who receives a 2-Month Notice under section 49 of the Act is entitled to leave earlier by giving the landlord 10-days written Notice, and would only have to pay the pro-rated rent applicable to the period prior to vacating. However, I find that this tenant chose to leave earlier without giving the 10-day written Notice and, thus is not entitled to any further refund of rent beyond the one-month credit already in effect.

### **Analysis: Landlord's Application**

In regard to the landlord's claim for rent owed for the period from October 15, 2012 until November 14, 2012, I find that this rent is not owed because, as stated above, the tenant was entitled to be credited or paid an amount that is the equivalent of one month's rent in the final month of the tenancy.

Accordingly, the landlord's claim for rent must be dismissed.

With respect to the landlord's claim for the cost of utilities, I find that the manner of payment and amounts to be paid by the tenant would be an issue negotiated between the parties as a tenancy term within their tenancy agreement. In this instance, I find that the landlord had provided a copy of the agreement that verified utilities were not included in the rent and also submitted utility invoices into evidence. I find that the landlord is seeking to have the tenancy term for utilities enforced by being granted a monetary order in compensation of the costs of utilities.

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under either the Act or the tenancy agreement and section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

I find that, in order to enforce the tenancy agreement term relating to utilities owed, the tenancy agreement must include specific terms with respect to the amount or percentage and what the agreed-upon payment arrangements should be followed.

On the subject of whether or not a term of a tenancy agreement can be enforced, Section 6(3) of the Act states: A term of a tenancy agreement is not enforceable if:

- the term is inconsistent with this Act or the regulations,
- the term is unconscionable, or

- the term is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

In this instance, in the absence of an amount specified within the tenancy agreement, I find that the term for utility payment is not sufficiently clear and therefore cannot be enforced.

Accordingly, I find that the portion of the landlord's monetary claim relating to utilities must be dismissed.

Based on the testimony and evidence presented during these proceedings I find that the landlord is not entitled to monetary compensation for rent nor utilities and the landlord's application must therefore be dismissed.

I find that the tenant is entitled to be paid \$950.00, comprised of double the security deposit of \$450.00 and the \$50.00 cost of the application. Accordingly I hereby issue a monetary order in favour of the tenant for \$950.00. This order must be served on the landlord by registered mail or in person and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The tenant is successful in the application and is issued a monetary order for a refund of double the security deposit. The landlord's application was dismissed in its entirety without leave.

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: April 03, 2013

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Residential Tenancy Branch

