



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for to recover the security and pet deposit and a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to recover double the security and pet deposits?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this month to month tenancy started on October 31, 2009. Rent for this unit was \$834.50 at the end of the tenancy and the tenant paid a security deposit of \$400.00 and a pet deposit of \$100.00 on October 31, 2009. The tenancy ended on November 28, 2012 and the tenant gave the landlord a forwarding address in writing on November 30, 2012.

The tenant testifies that she moved from the rental unit after receiving a letter from the landlord asking the tenant to vacate the unit. The tenant testifies that the first letter gave the tenant 30 days notice and the second letter gave the tenant a two month notice and the last month's rent in compensation. The tenant testifies that she vacated the rental unit because of these letters and was not aware that these were not legal notices to end the tenancy. The tenant testifies that the landlords had informed the tenant that a family member from India was going to live in the rental unit, this later changed to the landlords son going to live in the unit. The tenant testifies that since that time the tenant has seen the unit advertised for rent in the newspaper and no one has moved into the unit. The tenant has provided two advertisements for a unit in evidence.

The tenant testifies that as the landlords family member did not move into the rental unit the tenant seeks to recover compensation equivalent to two months' rent from the landlords to the amount of \$1,669.00.

The tenant testifies that the landlord has not returned the tenant's security or pet deposit within 15 days of the end of the tenancy and receiving the tenants forwarding address in writing. The tenant testifies that therefore the tenant is entitled to recover double the security and pet deposit from the landlords to the amount of \$1,000.00.

The landlord testifies that their son was intending in moving into the rental unit after the tenant had vacated the unit. The landlord testifies that the tenant left the unit in such a disgusting condition that their son has not yet been able to move into the unit. The

landlord testifies that the tenant had smoked in the unit and everything was covered in nicotine stains and the smell of smoke cannot be removed from the unit at this time. The landlord testifies that the advertisements the tenant has provided in evidence are for some of the other units the landlord has available for rent now. The landlord therefore disputes the tenants claim for compensation of \$1,669.00. The landlord has provided a video in evidence showing the condition of the rental unit at the end of the tenancy.

The landlord testifies that the tenant's security and pet deposit were kept due to the costs incurred by the landlord to clean the tenants unit and remove a substantial amount of garbage left in the unit.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation as the landlord has not used the rental unit for the purpose stated when the landlords wrote to the tenant to ask the tenant to vacate the rental unit. I refer the parties to s.51 of the *Act* which says that if 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 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. However this section refers to a Notice having been given to the tenant under s. 49 of the *Act*. This Notice refers to a legal two month notice which the tenant agrees she did not receive from the landlord.

Consequently as no Two Month Notice was given to the tenant then I find the tenant did not have to move out of the rental unit in accordance with a letter provided by the landlord and as such the tenant would not be entitled to compensation equivalent to two

months' rent. This section of the tenants claim is therefore dismissed without leave to reapply.

With regard to the tenants claim for double the security and pet deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against them by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on November 30, 2012. As a result, the landlords had until December 15, 2012 to return the tenants security and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security or pet deposit and have not filed an application for Dispute Resolution to keep the deposits. Therefore, I find that the tenant has established a claim for the return of double the security and pet deposit to the amount of **\$1,000.00** pursuant to section 38(6)(b) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,000.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: April 23, 2013

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Residential Tenancy Branch

