



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was an application by the tenant for a monetary order for compensation and for the return of this security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant and the named landlord participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit including double the amount?  
Is the tenant entitled to monetary compensation because the landlord has not used the rental property for the purpose stated in a two month Notice to End Tenancy

### Background and Evidence

The rental unit is a basement suite in the landlords' house in Langley. The tenancy began on July 31, 2011 for a one year fixed term and thereafter month to month. Monthly rent was \$900.00 payable on first day of each month. The tenant paid a security deposit of \$450.00 on July 22, 2011.

On or about November 24, 2012 the landlords served the tenant with a two month Notice to End Tenancy for landlord's use. The Notice required the tenant to move out of the rental unit by February 1, 2013. The stated ground for the Notice was that the rental unit will be occupied by the landlords or a close family member of the landlords. The tenant moved out of the rental unit on January 29<sup>th</sup>. The tenant sent a letter to the landlords dated January 31, 2013. With the letter he returned the keys to the rental unit. He said: "herewith I am forwarding the keys to the basement suite of your house. I had hoped to hand them to one of you on the afternoon of the 29<sup>th</sup> of this month, when I left, but no one was around." He also said: "I expect you will be anxious to return my

damage deposit and as you know it is due on the 15<sup>th</sup> of next month. Kindly mail it to the above address.”

The landlord responded by letter dated February 6, 2013. He said in the letter that because the tenant had not participated in a walkthrough of the rental unit at the end of the tenancy and because the tenant damaged the rental unit he would not return the deposit.

The tenant submitted evidence that he said showed that the rental property was listed for sale, contrary to the stated grounds for ending the tenancy as set out in the two month Notice to End Tenancy. The tenant said that the rental property had been listed for sale during the tenancy. He submitted a copy of an internet listing that he said was a current listing to sell the rental property.

The landlord testified that he had evidence that he intended to submit in advance of the hearing, but failed to send because of personal and family issues. The landlord said that the property was no longer listed for sale; the listing submitted by the tenant was taken from an inactive website and the landlords were not selling the property. The landlord said that his parents would be moving into the basement suite formerly occupied by the tenant. He testified that their move had been delayed because the tenant caused damage to the carpet in the rental unit and it needed to be replaced with new flooring before his parent could move in. He said that he was also waiting for the sale of his parents’ house to complete before they moved to the rental unit.

The landlord testified that he conducted a walk-through of the rental unit with the tenant at the beginning of the tenancy. He said that the tenant was not available for a walk-through at the end of the tenancy. The landlord testified that because the tenant caused damage to the rental unit and did not take part in a condition inspection he did not return the tenant’s security deposit. He said that the damage caused by the tenant exceeded the amount of his deposit. The landlord said that he was not aware that he needed to make a claim if he wanted to retain the deposit. He assumed that the matter would be dealt with at this hearing.

### Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the

end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

If the landlord wants to make a monetary claim against the tenant he must make his own application for dispute resolution and provide evidence to support his claim.

I am satisfied that the tenant provided the landlord with his forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$900.00. The tenant is entitled to recover the \$50.00 filing fee for this application for a total award of \$950.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

With respect to the tenant's claim for compensation based on the landlord's failure to use the rental property for the purpose stated in the Notice to End Tenancy, I find that the application is premature. Section 51 (2) of the *Residential Tenancy Act* provides that:

- (2) In addition to the amount payable under subsection (1), 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.

The Act does not define what is a reasonable period within which steps must be taken to accomplish the purpose for which the Notice was given. According to the landlord he

has taken steps to prepare the unit for occupancy by his parents and he has not used it for any other purpose.

I dismiss the tenant's application for compensation under section 51 with leave to reapply. If the tenant finds that there are grounds to pursue his claim that the landlord has not used the rental property for the purpose stated in the Notice, he may 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: May 30, 2013

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Residential Tenancy Branch

