



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This is an application for a monetary order for \$5,539.64.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the applicant the opportunity to testify at the hearing.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on April 18, 2013; however the respondent did not join the conference call that was set up for the hearing.

Documents sent by registered mail are deemed served five days after mailing.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Is the applicant entitled to a monetary order of \$5,539.64?

### Background and Evidence

The applicant testified that:

- This tenancy began on July 1, 2006, and a security deposit of \$750.00 was paid on that date.
- On January 31, 2013 the landlord served him with a two month notice to end tenancy for landlord use that stated "*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.”*

- He accepted the notice to end tenancy, and subsequently, on March 4, 2013, he gave the landlord 10 days written notice that he would be ending the tenancy on March 15, 2013. Included in that 10 day notice was a copy of his forwarding address in writing.
- He subsequently vacated the rental unit on March 15, 2013.
- To date the landlord has failed to return any of his security deposit, and since he had paid the full February 2013 rent in advance the landlord should also have returned the rent overpayment, as the last month rent should have been free.
- Further, the landlord failed to comply with the reasons given on the notice to end tenancy, as no one moved into the rental unit and in fact the rental unit was demolished and a new home is being built on the property.

He is therefore requesting a monetary order as follows:

|  |           |
|--|-----------|
| Return of full security deposit  | \$750.00  |
| Interest on security deposit   | \$24.65   |
| Penalty for failing to return deposit within the time limit required under the Act.                        | \$750.00  |
| Rent overpayment   | \$828.64  |
| Penalty for failing to comply with reasons given for ending tenancy = two times the present \$1605.00 rent | \$3210.00 |
| Filing fees  | \$100.00  |
| Total  | \$5655.29 |

### Analysis

#### Security deposit

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on March 15, 2013 and the landlord had a forwarding address in writing by March 4, 2013 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$750.00, and therefore the landlord must pay \$1500.00, plus interest totaling \$24.65, for a total of \$1524.65.

#### Rent overpayment

When the landlord gives a notice to end tenancy for landlord use, the landlord must compensate the tenant the equivalent of one month's rent and therefore in most cases the last month's rent is not required to be paid.

Further at any time after receiving a two month notice to end tenancy, the tenant can give 10 days' written notice to end the tenancy earlier.

Therefore since the tenant did give the required 10 days notice and moved out of the rental unit on March 15, 2013, the tenant should not have paid any rent from halfway through the month of February 2013.

The tenant however had paid the full rent for the month of February 2013, and therefore it is my decision that the landlord must return one half of the \$1605.00 rent paid for the month of February 2013, for a total of \$802.05. The tenant had calculated it in a daily amount for the month of March 2013, however since the number of days in March differs from the number of days in February, I will not allow the daily calculation.

#### Penalty for not complying with the reasons given for ending the tenancy

- As stated above the a two month notice to end tenancy for landlord use stated; *"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."*

In this case, the landlord has provided no evidence to show that the purchaser's asked the landlord in writing to give this notice, nor did the landlord attending hearing to give any evidence.

Further, the tenant has provided evidence that shows that the rental unit was not used as stated, and in fact was demolished.

Section 51(2) of the Residential Tenancy Act states: 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.

Therefore in this case since there's no evidence to show that the purchaser's asked the landlord in writing to give a notice to end tenancy, it's my finding that the landlord is liable for the penalty, and must pay the tenant the equivalent of double the monthly rent.

The monthly rent payable was \$1605.00, and therefore the landlord must pay \$3210.00.

Having allowed the vast majority of the applicant's claim I also order recovery of the \$100.00 in filing fees.

Therefore the total amount I have allowed is as follows:

|  |           |
|--|-----------|
| Return of full security deposit  | \$750.00  |
| Interest on security deposit   | \$24.65   |
| Penalty for failing to return deposit within the time limit required under the Act.                        | \$750.00  |
| Rent overpayment   | \$802.05  |
| Penalty for failing to comply with reasons given for ending tenancy = two times the present \$1605.00 rent | \$3210.00 |
| Filing fees  | \$100.00  |
| Total  | \$5636.70 |

Conclusion

I have issued a monetary order for the respondent to pay \$5,636.70 to the applicant.

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: July 09, 2013

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Residential Tenancy Branch

