



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit; for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began in November 2010 for a monthly rent of \$1,150.00 due on the 1<sup>st</sup> of each month. The tenants submit they paid a security deposit in the amount of \$525.00. The landlord submits that the total deposit should have been \$575.00 but that the tenants only paid \$287.50.

The tenants submit that they paid the landlord \$287.50 cash on November 30, 2010 and they provided him with a cheque on December 17, 2010 for the balance. The landlord submits that the deposit never cleared and he did not collect the balance owing for the deposit and currently only holds \$287.50.

The parties agree the tenants provided their forwarding address on May 3, 2013 by posting it to the door of the landlord's home. The landlord testified that he retained the deposit because of damage caused to the rental unit, but that he did not submit an Application for Dispute Resolution seeking to retain any portion of the deposit.

The parties also agree that the tenancy ended because the landlord issued them a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 27, 2013 with an effective vacancy date of April 30, 2013, citing that the landlord had all

necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testified that he misunderstood the tenants when they indicated that they had found a new place for April 1, 2013, he thought he would be able to begin his renovations at that time. The landlord testified that he is still awaiting his final inspection and that should be completed by September 15, 2013.

The landlord further testified that he did have someone move in to the rental unit as of the beginning of May 2013 at a greatly reduced rent and that the new tenant has been there for the duration of the repairs and renovations but did move out for a two week period when the ceiling was being completed and is currently staying elsewhere while the painting is being completed.

The landlord confirmed that he had changed the locks on the rental unit on April 20, 2013 and that he did allow his new tenant to move things in before the end of April but that he did not move in until about a week into May 2013.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord confirmed he received the tenants' forwarding address by May 3, 2013 I find that he had until May 18, 2013 to either return the deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit. As the landlord failed to do either, I find that he failed to comply with Section 38(1) and the tenants are entitled to return of double the deposit, pursuant to Section 38(6).

In the case of verbal testimony, I find that where the testimony is clear and both the landlord and tenant agree on it, there is no reason why such testimony cannot be relied upon. However when the parties disagree on the events that are being testified about the burden rests with the party making the claim to provide sufficient evidence to corroborate their position.

In the case before me, the tenants submit the security deposit was \$525.00 and the landlord submits that the tenants only paid \$287.50 for the deposit. As the tenants have provided no evidence to corroborate the amount paid, I find the tenants have failed to establish they paid a deposit of \$525.00. However, I will accept, based on the landlord's testimony that they did pay at least \$287.50. Therefore, as per the above, I find the tenants are entitled to compensation in the amount of \$575.00 for double the amount of the deposit.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice if the landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

In addition, Section 51 states that if the landlord has not taken steps to accomplish the stated purpose for ending the tenancy or that it is not used for the stated purpose for at least 6 months the landlord must pay the tenants compensation that is equivalent to double the amount of rent according to the tenancy agreement.

While I accept the landlord may have completed repairs and renovations, I find the landlord was able to complete those repairs and renovations, for the most part, without requiring the unit to be vacant and as such, I find the landlord had an obligation to continue the tenancy and offer these tenants the opportunity to maintain the tenancy once the repairs had been completed.

As such, I find the landlord failed to complete the stated purpose – renovations and repairs that required vacant possession within a reasonable time after the end of the tenancy. I also find the landlord started receiving rent from a new tenant the month following the end of the tenancy and he continues to do so.

I find the tenants are entitled to compensation in the amount of double the amount of rent from their tenancy agreement or \$2,300.00.

As to the tenants' claims for compensation for the payment of rent and for the payment of a pet damage deposit and security deposit at their new rental unit I find that the *Act* provides the remedy as noted above when a landlord fails to complete the stated purpose. I dismiss this portion of the tenant's claim.

In addition the tenants seek compensation for moving costs, however, I find the tenants have been compensated for their moving costs by receiving the month of April 2013 rent free with this landlord as part of the compensation the tenants are entitled just for receiving the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property. I dismiss this portion of their Application.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,945.00** comprised of \$575.00 double security deposit owed; \$2,300.00 compensation and \$50.00 of the \$100.00 fee paid by the tenants for this application, as they were only partially successful in their claim.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: August 27, 2013

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Residential Tenancy Branch