



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, O

### Introduction

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

The tenant and landlord attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. 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 a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover part of the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on June 01, 2013. There were originally three tenants named on the tenancy agreement however one tenant vacated and the tenancy continued with two tenants. This was a fixed term tenancy which was not due to end until May 31, 2014. Rent for this upper unit was \$1,400.00 per month and was

due on the first of each month. The landlord testified that the tenants paid a security deposit of \$700.00.

The tenant testified that the landlord served the tenants with a Two Month Notice to End Tenancy in person on September 01, 2013. A copy of the Notice has been provided in evidence by the tenant. The Notice has an effective date of October 31, 2013 and gives the reason to end the tenancy that the landlord, the landlord spouse or a close family member of the landlord or the landlords spouse will occupy the rental unit.

The tenant agreed that she had complained to the landlord about the other co-tenant abusing her. The tenant testified that the landlord agreed to help the tenant get the other tenant out of the unit by issuing the Two Month Notice to End Tenancy and then the landlord would move into the unit and share it with the tenant on a month to month basis.

The tenant testified that she vacated the unit on March 15, 2014 and then when she relooked at the Two Month Notice the tenant realized that she should have been given compensation for the Notice. The tenant testified that she also thinks she paid more than half a month's rent for the security deposit and although the landlord returned some of the security deposit he did withhold \$36.67 of the security deposit. The tenant seeks to recover \$466.67 in compensation for the Two Month Notice and \$36.67 for the balance of the security deposit.

The landlord testified that in August, 2013 the tenant came to the landlord and said she was being bullied by the other tenant. The landlord testified that the tenant asked the landlord to help and so together they decided that the best thing to do would be for the landlord to serve both tenants with a Two Month Notice to End Tenancy and for the landlord to move into the unit and share it with the tenant. The tenant also agreed that the tenancy would then revert to a month to month tenancy and the tenant would continue to live in the unit with the landlord. The landlord testified that the other tenant

did move out in October, 2013 and the landlord gave that tenant an amount for compensation that may have been \$700.00 as her share of the compensation.

The landlord testified that the tenancy continued with this tenant and when this tenant moved out on March 15, 2014 the tenant's security deposit was returned to her.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find the landlord was not entitled to serve the tenants with a Two Month Notice to End Tenancy as this was a fixed term tenancy; however, neither tenant disputed the Notice and the co-tenant did vacate the rental unit. I find the parties colluded together to end the tenancy with the co-tenant and then this tenant continued with the tenancy on a month to month basis while sharing the unit with the landlord who is also the owner. Compensation for the Two Month Notice is an amount a landlord pays to a tenant to help them with moving costs. As this tenant did not vacate the rental unit in accordance with the Notice but rather continued to reside in the unit I find the tenant is not entitled to compensation for that Notice.

Furthermore, I find the landlord and tenant started to share the unit including bathroom and kitchen facilities. I refer the parties to s. 4(c) of the *Act* which states:

*4. This Act does not apply to*

*(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.*

Consequently, it is my decision that the *Act* does not apply to this continued tenancy and I refuse jurisdiction in the matter of the security deposit.

Conclusion

The tenant's application is dismissed without leave to 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: July 22, 2014

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Residential Tenancy Branch

