



# 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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent (the landlord) confirmed that she was handed a copy of the tenant's dispute resolution hearing package by the tenant on April 22, 2014, and forwarded this package to the landlord. She also confirmed that the landlord received copies of the tenant's written evidence, the only written evidence submitted for this hearing. I am satisfied that the tenant served the above documents to the landlord in accordance with the *Act*.

At the beginning of this hearing, the tenant reduced the amount of her requested monetary award from \$5,000.00 to \$3,600.00, after having received \$1,400.00 after she applied for dispute resolution.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

On August 13, 2010, the tenant and the then landlord signed a one-year fixed term Residential Tenancy Agreement (the Agreement), a copy of which was entered into written evidence by the tenant. According to the terms of this Agreement commencing on September 1, 2010, the tenant was to pay monthly rent of \$2,600.00 to the landlord in advance payable on the first of each month. The tenant paid a \$1,300.00 security deposit on September 1, 2010. At the end of the initial fixed term, this tenancy converted to a periodic tenancy.

In mid-November 2013, the current landlord and Respondent in the tenant's application purchased this rental property. Ownership of the rental property transferred from the previous landlord to the current landlord and Respondent on December 5, 2013. On January 5, 2014, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice). The 2 Month Notice, entered into written evidence, identified the following reason for seeking an end to this tenancy:

- *A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares...*

Although the effective date on the 2 Month Notice was identified as March 15, 2014, the earliest legal effective date was March 31, 2014.

The tenant paid her full January 2014 rent. On or about January 20, 2014, the tenant contacted the landlord by telephone and advised that she would be ending her tenancy by February 1, 2014. When complications arose at the new location where she was moving, the parties agreed to allow the tenant to remain in the rental unit until February 15, 2014, by which time the tenant had vacated the rental unit. The parties agreed that the tenant did not pay any rent for February 2014.

The tenant's amended application for a monetary award of \$3,600.00 included her request for a return of double her security deposit, less the amount returned to her in late April 2014. She maintained that the landlord had contravened the provisions of section 38 of the *Act* requiring the landlord to either return her security deposit within 15 days of her providing her forwarding address to the landlord or to apply for dispute resolution to obtain authorization to retain her security deposit. The landlord confirmed that her husband received the tenant's forwarding address on March 4, 2014, at the time of their joint move-out condition inspection. She also confirmed that no portion of the security deposit was returned to the tenant within 15 days of March 4, 2014. The remainder of the tenant's application for a monetary award resulted from the tenant's claim that the landlord did not use the rental property for the purpose stated on the 2 Month Notice. She gave undisputed sworn testimony that the rental home was

demolished and the landlord's son has not lived in the rental unit for the required six-month period following the end of this tenancy.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to a final and binding resolution of all issues in dispute arising out of the tenant's application and this tenancy under the following terms:

1. The landlord agreed to mail the tenant a negotiable cheque in the amount of \$3,650.00 by September 7, 2014.
2. The tenant agreed that the above monetary terms satisfy all monetary claims she may have regarding this tenancy.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues arising out of this tenancy, and furthermore agreed that they will not initiate any new applications of any type regarding this tenancy.

### Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$3,650.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 21, 2014

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Residential Tenancy Branch

