



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD RR MNDC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) An Order for a refund of overpaid rent;
- c) An Order for compensation of a full month's rent in accordance with sections 49 and 51;
- d) A Monetary Order for double the monthly rent pursuant to section 51 as the unit was not used for the purpose described in the Notice to End Tenancy; and
- e) To recover the filing fee for this application.

### **SERVICE**

The landlord did not attend the hearing. The tenant provided sworn evidence that they had received a Notice to End Tenancy for landlord's use of the property on March 24, 2014 and had served the landlord with the Application for Dispute Resolution by registered mail. It was verified online that the landlord was notified by the post office and it was available for pickup from June 9, 2014 to June 26, 2014 but was unclaimed. I find the landlord is deemed to be served with the Application/Notice of Hearing. I find the tenants served the landlord with their forwarding address together with their 10 day Notice to End Tenancy on April 9, 2014 and vacated on April 25, 2014. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to compensation as claimed and to recover their filing fee of \$100 for the application?

### **Background and Evidence**

Only the tenants attended the hearing but the landlord is deemed to be served with the Application/Notice of Hearing. The tenants were given opportunity to be heard, to present evidence and make submissions. The tenants said they had paid a security deposit and pet damage deposit, each of \$800 on January 1, 2007 when the tenancy began and agreed to rent the unit for \$1600 a month. The tenants vacated the unit on April 25, 2014 and provided their forwarding address in writing on April 9, 2014. They gave no permission to retain any of the deposits. The landlord had two agents attend the move-out inspection and give the tenants a cheque for \$1300 (withholding \$300 for damages) which she said was for the return of the security deposit. The tenants object and say it is questionable that she was returning all but \$300 of the deposits as she withheld other compensation she owed them under sections 49 and 51, allegedly for damages. They claim double the \$1600 in deposits. The tenants provided evidence of receipts and notices to support their statements.

The tenants were served a two month Notice to End Tenancy for landlord's use of the property and they claim compensation of \$1600 for one month's rent as outlined in sections 49 and 51. They provided evidence that the landlord gave them a cheque by mail of \$815 which they received on June 3, 2014, claiming she was withholding the balance of \$785 for repairs. They claim the balance of the \$785 due to them under section 51 of the Act. The tenants also claim \$266.66 refund of rent from April 25-30, 2014 pursuant to their 10 day Notice and section 50 of the Act.

The tenants also claim compensation of twice the monthly rent (\$3200) as the landlords did not occupy the premises and this was the purpose stated in the Notice to End Tenancy; they sold the property within the month. The tenants live in the same building and say they have met the new owners and neither the landlord nor close relatives occupied the suite since they vacated, but the landlord was doing some repairs. They provided evidence of the vacant suite and evidence of the MLS listing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

*38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that they paid \$1600 total in deposits on January 1, 2007, served the landlord with their forwarding address in writing on April 9, 2014 and vacated on April 25, 2014 pursuant to a 10 day Notice to End their Tenancy as authorized by section 50 of the Act. I find they gave no permission for the landlord to retain the deposits and did not receive the refund in full of their security deposits. They did receive \$1300 on April 25, 2014; the landlord allegedly only withheld \$300 of the deposits. I find the tenant entitled to recover twice their deposits plus the unpaid interest on the original deposit.

According to sections 50 and 51 of the Act, when a tenant receives a section 49 Notice, as these tenants did, they are entitled to one month's free rent. According to section 51, the tenant is entitled to receive this compensation on or before the effective date of the landlord's Notice. The landlord's Notice was effective May 31, 2014 and a cheque for only \$815 was mailed to the tenants on May 30, 2014 as the landlord claimed she was withholding the balance of \$785 for repairs. I find no authorization in section 51 for the landlord to withhold monies for repairs from the rent refund. Therefore, I find the tenant entitled to the balance of \$785 (\$1600-815). Furthermore, I find the tenant entitled to a refund of 5 days of the rent they paid for April 2014 pursuant to section 50 of the Act. This amounts to \$266.67 refund ( $1600/30 \times 5 \text{ days} = 266.666$ ).

I find the evidence of the tenant credible that the landlord did not fulfill the purpose for which she served the Notice to End Tenancy and sold the property rather than having herself or a close family member occupy it. The tenants provided evidence of an MLS listing showing that the property was put on sale on July 4, 2014; they live in the same building and gave sworn evidence of the landlord doing some repairs and painting from their vacating until the listing date. They said they had also verified this with the new owners and with a neighbour who visited the landlord while she was working in the unit. Pursuant to section 51(2) of the Act, I find the tenants entitled to recover double the monthly rent or \$3200 as the rental unit was not used for the stated purpose.

**Conclusion:**

I find the tenants entitled to a monetary order as calculated below and to recover the \$100 filing fee for this application. A monetary order is enclosed.

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|---|----------|
| Original deposit plus interest                  | 1648.36  |
| Twice Original deposit                          | 1600.00  |
| Rent refund April 5 days                        | 266.67   |
| One month free rent s.51                        | 1600.00  |
| Twice the monthly rent s. 51(2)                 | 3200.00  |
| Filing fee for this application                 | 100.00   |
| Less amounts paid by landlord: \$1300+ 815 +300 | -2415.00 |
| Total Monetary Order to Tenant                  | 6000.03  |

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: September 16, 2014

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Residential Tenancy Branch

