



# 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 an application by the tenant for a monetary order for the return of the security deposit, for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

About four years into the tenancy, in June 2014, the rental unit was sold and the landlord for the last month of tenancy was the purchaser of the rental unit and will be referred to as AG in this decision. The tenant has also named the previous landlord who was the seller in the transaction of the sale of the rental unit as a respondent. He will be referred to as DH in this decision.

### **Issues to be Decided**

Is the landlord holding the security deposit? Is the tenant entitled to compensation and to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on April 01, 2010 and ended on August 01, 2014. The monthly rent was \$1,600.00 and prior to moving in the tenant paid a security deposit of \$1,600.00. The rental unit was located in the upper level of a two level home.

When the house was sold in June 2014, the landlord DH was instructed to issue a notice to end tenancy for landlord's use of property.

On June 06, 2014, the landlord served the tenant with a notice to end tenancy for landlord's use of property on the proper two page form with an effective date of August 01, 2014. The reason for the notice was, *"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"*

DH filed a letter into evidence from the realtor that represented the purchaser AG. The letter is dated September 16, 2014 and confirms that the buyer's agent had requested that the upstairs tenant be asked to vacate the rental unit so that the buyer AG could move into the unit on September 01, 2014.

AG confirmed that he requested that the house be vacant as soon as possible after the closing of the sale transaction because he stated that he intended to occupy the house. AG stated that he moved into the basement in June 2014 and found that it needed repair.

The tenant stated that he noticed that AG had advertised the availability of the upstairs unit at the end of July and copies of the advertisements were filed into evidence. AG showed the unit on August 01, 02 and 03 and found a tenant for September 01, 2014. The advertised rent (\$2,350.00) was considerably higher than what the tenant was paying (\$1,600).

The tenant asked for the return of the security deposit and AG gave him \$800.00. The tenant stated that he did not have his rental agreement handy and was not sure of the exact amount he had paid. Later he realized that he had paid \$1,600.00 for a security deposit and requested AG to return this amount. AG asked for additional time to check the adjustments made during the sale of the property.

AG agreed that he was credited \$1,600.00 for the security deposit and also agreed that he had returned only \$800.00. However he stated by the time he found out, the tenant had already filed this application and therefore he decided to wait until this hearing was done, before he would return the balance of the deposit.

The tenant stated that he had not provided the landlord with his forwarding address in writing, but relied on the address he had provided to AG when he served him with the notice of this hearing.

The tenant is seeking an amount equal to double the monthly rent as compensation from the landlord for not complying with the two month notice to end tenancy for Landlord's use of property.

The tenant is also claiming the return of the balance of the security deposit in the amount of \$800.00 and the recovery of the filing fee.

### **Analysis**

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the rental unit was sold and that the purchaser had requested the landlord to in writing to provide a notice to end tenancy because the purchaser intended to occupy the rental unit

Based on the testimony of both parties and the evidence filed by the tenant, I find that AG moved into the lower level of the home and did not intend to occupy the rental unit, located on the upper level. The actions of AG which include advertising the availability of the unit prior to the tenant moving out for a higher rent and showing the unit to prospective tenants indicate that AG intended to re rent the unit. Since the unit was not used for the stated purpose, I find that the landlord must pay the tenant \$3,200.00 which is the equivalent of double the monthly rent.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenant did not apply for the return of double the deposit but even if he had, since he failed to provide the landlord with his forwarding address in writing, he is not entitled to the return of double the security deposit.

However, AG agreed that he is holding the balance of the security deposit in the amount of \$800.00 and therefore I find that the tenant is entitled to the return of this amount.

The tenant has proven his case and is entitled to the filing fee of \$50.

Over all the tenant has established a claim for compensation in the amount of \$3,200.00, return of the security deposit in the amount of \$800.00 and the recovery of the filing fee of \$50.00 for a total of \$4,050.00.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the amount of \$4,050.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Even though the tenant has named DH as a respondent, I find that DH is not liable for any of the tenant's established entitlement. Accordingly, the monetary order is made out in the name of AG only.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$4,050.00**.

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: March 13, 2015

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Residential Tenancy Branch

