



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act, (the "Act"), for a monetary order for money owed or compensation under the Act, regulation or tenancy agreement and for the return of double the security deposit.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on August 22, 2014, and that the Canada post history indicated documents were received. Filed in evidence is a copy of the Canada post tracking number.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

### Preliminary matter

In this case, the tenants are requesting compensation equal to one month's rent for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 51(1) of the Act, and for the return of double the security deposit. Those issues are identified in the details of dispute.

The tenants are seeking further compensation from the landlord for not using the premises for the stated purpose in the notice pursuant to section 51(2) of the Act. However, the details of dispute does not indicate this and no particulars were provided on this issue.

As the principles of natural justice require that a person be informed and given particulars of the claim against them and Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find it would be administratively unfair to proceed with this portion of the tenant's claim. The tenants are at liberty to reapply for compensation based on the landlord not using the premise for the stated purpose, pursuant to section 51(2) of the Act.

### Issues to be Decided

Are the tenants entitled to a monetary order for compensation under the Act?  
Are the tenants entitled to double the return of the security deposit?

### Background and Evidence

The tenancy began on June 1, 2011. Rent in the amount of \$1,150.00 was payable on the first of each month. The tenants paid a security deposit of \$500.00.

### Compensation equal to one month's rent

The tenant testified that they received a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on June 30, 2014, with an effective vacancy date of August 31, 2014. The tenant stated that they exercised their rights under the Act, by providing the landlord notice to end the tenancy earlier, which was effective July 31, 2014.

The tenant testified that they did not receive compensation from the landlord for receiving the notice and that they had paid rent for July 31, 2014. The tenants seeks compensation equal to one month's rent in the amount of \$1,150.00.

### Double the security deposit

The tenant testified on July 31, 2014, they gave the landlord their forwarding address in a letter that was placed in the landlord's mailbox. The tenant stated that they made a video which will show a copy of the letter and show them placing the said letter in the landlord's mailbox. Filed in evidence is a DVD, which supports the tenants' position.

The tenant testified that they did not give the landlord permission to keep any of the security deposit and the landlord has not returned any portion of the deposit as of today's date. The tenants seek double the deposit in the amount of \$1,000.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

### Compensation equal to one month's rent

Under section 49 of the Act, the landlord may end a tenancy for landlord's use of property, by serving the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property. In this case, the tenants received a notice with an effective date of August 31, 2014.

Section 50(1) of the Act states, if a landlord gives a tenant notice to end a periodic tenancy under section 49 of the Act. The tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

Section 50(3) of the Act states, a notice under this section does not affect the tenant's right to compensation under section 51.

Section 51(1) of the Act states, A tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the tenancy ended on July 31, 2014; the tenants' paid rent for July 2014. The landlord was required to refund the rent as compensation or pay the tenants the amount equal to one month's rent. In this case, the landlord did neither. I find the landlord breached the Act, by failing to pay compensation to the tenants. Therefore, I find the tenants are entitled to receive from the landlord an amount equal to one month's rent in the amount of **\$1,150.00**.

#### Double the security deposit

I have reviewed the video footage filed in evidence by the tenants. The footage shows that the landlord received the tenants' forwarding address in writing and that it was placed in the landlord's mail box on July 31, 2014.

There was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of **\$1,000.00**, comprised of double security deposit (\$500.00) on the original amounts.

I find the tenants have established a total monetary claim of **\$2,200.00** comprised of the above amounts and the \$50.00 fee paid by the tenant for this application. The tenants are granted a formal order pursuant to section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The tenants' application for compensation pursuant to section 51(2) is dismissed with leave to reapply.

The tenants are granted a monetary order in the above amount.

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 20, 2015

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Residential Tenancy Branch

