



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- a monetary order for return of all or a portion of the tenant's security deposit, pursuant to section 38.

The landlord's agent, CY ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the shareholder of the landlord company named in this application ("landlord company"), which is a family corporation. The landlord testified that he had authority to speak on behalf of the landlord company at this hearing.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing notice and first written evidence package by way of registered mail. Neither party could recall the exact date of service but the tenant stated that it was sometime around August 20, 2014, when he filed his application. The tenant testified that he served the landlord with his second written evidence package by way of registered mail. Neither party could recall the exact date of service but both confirmed it was sometime in January 2015. The landlord confirmed receipt of the tenant's hearing notice and both written evidence packages. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's entire application and written evidence packages ("Application").

The landlord testified that the tenant was served with the landlord's written evidence package on February 20, 2015, by way of registered mail. The tenant confirmed receipt

of the landlord's written evidence package. In accordance with sections 89 and 90 of the Act, I find that the tenant was duly served with the landlord's written evidence package.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2)(b) of the *Act*?

Is the tenant entitled to a monetary order for the return of his security deposit plus interest?

### Background and Evidence

The tenant testified that this month to month tenancy began on May 15, 1990 and ended on March 31, 2014. The landlord testified that the tenancy ended around April 5, 2014, as the tenant asked for an extension to vacate and remove his belongings. Monthly rent of \$860.00 was payable on the first day of each month. A written tenancy agreement was provided by the tenant with his Application, which indicated that a different landlord was previously managing the property. The landlord testified that the landlord company purchased the rental unit in 2013 and this tenancy, security deposit, and all tenancy rights transferred to the landlord company at that time.

The tenant testified that a security deposit of \$342.50 was paid to the former landlord on May 15, 1990. The landlord confirmed that he continues to retain this deposit in full. The tenant seeks a return of his security deposit plus interest. The landlord confirmed that he retained this deposit to cover cleaning costs after the tenant vacated the rental unit. The landlord submitted photographs and stated that the tenant left behind large furniture and other garbage that had to be cleaned by the landlord.

Both parties agreed that the tenant did not provide written permission to the landlord to retain any amount from his security deposit. The landlord testified that he received the tenant's forwarding address in writing when he received the tenant's application for this hearing. The landlord stated that when the tenancy ended, he did not make an application for dispute resolution to retain any amount from the tenant's security deposit because he did not have the tenant's forwarding address until he was served with the tenant's application. The landlord indicated that after he received the forwarding address, he assumed the security deposit would be dealt with at this hearing and that he did not have to file a separate application to deal with the deposit.

The tenant stated that a move-in condition inspection and report were completed with his former landlord. The tenant stated that the landlord did not offer a move-out condition inspection or report when he vacated the rental unit. The landlord stated that the tenant participated in a move-out condition inspection but the tenant refused to sign the inspection report, so no report was completed. The landlord confirmed that there was no unpaid rent at the end of this tenancy. The landlord indicated that although the tenant moved out on April 5, 2014, he decided not to charge the tenant rent for the first five days of April 2014.

Both parties agreed that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 28, 2014 ("2 Month Notice"). The notice identified an effective move-out date of March 31, 2014. The tenant stated that he did not dispute this notice because he did not realize that he could do so. The tenant indicated that he vacated the rental unit on March 31, 2014, because of the 2 Month Notice. The landlord testified that the tenant was compensated as per section 51(1) of the *Act*, which allows one month's rent free pursuant to the 2 Month Notice.

The 2 Month Notice was provided with the tenant's application, identifying the following two reasons for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse;*
- *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.*

The landlord stated that he issued the 2 Month Notice so that he could occupy the rental unit personally. The landlord indicated that he is the shareholder of the family corporation that owns the rental unit. The landlord stated that he moved into the rental unit around late April or early May 2014, after the rental unit was cleaned. The landlord stated that he resided in the rental unit on average about once per week or once every 10 days, for a total period of approximately 2 months. The landlord stated that he required the rental unit at the time because he was going through personal problems. The landlord stated that when these personal problems ended, he decided to re-rent the rental unit to a third party. The landlord testified that as of August 1, 2014 until the present date, he has been renting the rental unit to a third party who is not a member of the family corporation or the landlord's family member. The tenant stated that he was told by others living in the rental building that the rental unit was not being occupied by

the landlord or the landlord's family and that he filed this Application after receiving that information.

The tenant seeks compensation under section 51(2) of the Act for double his monthly rent of \$860.00, totalling \$1,720.00. The tenant stated that because the landlord did not use the rental unit for the stated purpose on the 2 Month Notice for a period of 6 months, he is entitled to this compensation.

The tenant also seeks compensation for moving expenses in the amount of \$1,680.00 and transferring his hydro account to his new rental unit in the amount of \$13.02. The tenant stated that he applied for these expenses because the Residential Tenancy Branch ("RTB") staff told him that he could apply for it. The tenant provided a hydro bill, dated March 31, 2014, which indicates an "account charge" and tax, totalling \$13.02. The tenant also provided a bill of lading in the total amount of \$3,360.00 for a move completed on March 31, 2014, which indicates payment was made by way of cash and certified cheque. The tenant confirmed that he paid the entire moving bill using these methods. The tenant stated that the movers assisted him with packing and moving and that the cost was high because he was suffering from medical problems so the move was slower. The tenant stated that he was only claiming for a portion of the moving bill in the amount of \$1,680.00 for these reasons.

The landlord stated that the tenant did not produce a proper receipt for his moving expenses, as the bill of lading did not indicate a GST tax number. The landlord stated that the bill of lading was only an estimate. The landlord indicated that the \$3,360.00 bill of lading and the \$1,680.00 being sought by the tenant, were both unreasonable amounts. The landlord stated that the tenant only moved one to two blocks away, left most of his large furniture behind as per the landlord's photographs, and only had a one bedroom apartment, does not require a large moving cost.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

### Security Deposit

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days

of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenant seeks the return of his security deposit of \$342.50 plus interest from the landlord. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the full security deposit to the tenant or make an application for dispute resolution to claim against this deposit.

Although the landlord received the tenant's forwarding address by way of the tenant's Application for this hearing, this is not proper written notice in accordance with the *Act*. Therefore, the landlord intended to deal with the security deposit at this hearing, given his evidence regarding damage and the photographs he submitted. However, the landlord has now been notified of the tenant's forwarding address by way of the tenant's Application and after discussions at this hearing. Accordingly, the tenant's Application for the return of his security deposit plus interest, is dismissed with leave to reapply.

The landlord is put on notice that it is deemed to have received the tenant's written forwarding address five (5) days after the date of this decision (by March 31, 2015). The landlord then has 15 days after deemed receipt (until April 15, 2015) to either return the tenant's security deposit plus interest in full or to file an application for dispute resolution. If the landlord does not complete either of the above actions by April 15, 2015, the tenant may apply for the return of his security deposit in accordance with section 38 of the *Act*.

#### Section 51(2)(b) Compensation

Sections 49(3) and (4) of the *Act* read as follows:

*49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

*(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purposes stated in the 2 Month Notice issued under section 49(3) or (4) of the *Act*. Section 51(2) states:

*51 (2) In addition to the amount payable under subsection (1), if*

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

The landlord is a shareholder of a family corporation that owns the rental unit. The tenant vacated the property sometime between March 31 and April 5, 2014. The landlord personally moved into the rental unit around late April to early May after he had to complete some cleaning, which I find to be a reasonable period of time. The landlord only resided in the rental unit for approximately 2 months total. The landlord then re-rented the property to a third party, unrelated to the family corporation or the landlord's family. This re-rental took place on August 1, 2014 and continues to the present. Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as he did not use the rental unit for his own personal residence for at least 6 months after he began occupying it in April/May 2014. Accordingly, I find that the tenant is entitled to double the monthly rent of \$860.00 as compensation under section 51, which totals \$1,720.00.

I dismiss the tenant's claim for \$1,680.00 in moving expenses and \$13.02 in hydro account changes. The tenant testified during the hearing that he was not happy at this rental unit, that he did not dispute the 2 Month Notice and that he was agreeable to leaving on March 31, 2014. The tenant would have had to incur these moving costs, including a hydro account charge, in any event when moving to a new place. Accordingly, I find that the tenant is not entitled to reimbursement of the above expenses under section 67 of the *Act*.

Conclusion

I issue a monetary Order in the tenant's favour in the total amount of \$1,720.00, against the landlord for double monthly rent compensation as per section 51(2)(b) of the Act (\$860.00 x 2 = \$1,720.00). The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for return of his security deposit plus interest, is dismissed with 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: March 26, 2015

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Residential Tenancy Branch

