



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Barafield Realty Ltd. c/o Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Prior to the hearing the tenant submitted evidence to confirm that she had received, from the landlord, cheques for petty cash and cleaning (as part of her employment). In addition she provided a copy of the Condition Inspection Report that shows she agreed the landlord could retain \$77.28 of the security deposit and a copy of a cheque dated February 11, 2015 from the landlord in the amount of \$260.22 for return of the balance of the security deposit.

At the hearing the tenant clarified that she has received the above noted items and now only seeks return of rent in the amount of \$337.50 and doubling of the security deposit. As such, I amend the tenant's Application for Dispute Resolution to exclude her claims for petty cash and cleaning.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent; and double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy agreement signed by the parties was for a month to month tenancy beginning on June 1, 2014 for a monthly rent of \$675.00 due on the 1<sup>st</sup> of each month with a security deposit of \$337.50 paid. The parties agreed the tenant returned possession of the rental unit January 19, 2015. A copy of the tenancy agreement was submitted into evidence by the tenant.

The parties also agreed the tenant worked for the landlord from the start of the tenancy. The tenant submitted that she only entered into the tenancy agreement with the landlord because it was a condition of her employment for her to do so. She stated that when she began she was told that she could not be in the rental unit on weekends and holidays. A copy of the employment contract was not submitted in evidence by either party.

The landlord's agent states that she cannot speak to what verbal discussions the tenant may have had with the previous manager in this regard but that since she has taken over she was not aware of any such arrangements.

The parties agreed that while the tenancy agreement stated rent was due on the 1<sup>st</sup> of each month the landlord deducted  $\frac{1}{2}$  of the rent from the tenant's paycheque on the 15<sup>th</sup> of each month and the remaining  $\frac{1}{2}$  from the tenant's paycheque issued on the last day of each month.

The parties agree that on January 16, 2015 the landlord terminated the employment contract with the tenant. The parties also agreed that on the same day the tenant provided the landlord with her notice to end the tenancy.

The parties agree that for the month of January the landlord deducted \$337.50 from her paycheque of January 15, 2015 and another \$337.50 from her final paycheque issued on January 16, 2015 for the balance of the month of January.

The tenant submitted that because she no longer worked for the landlord and the need for the rental unit was solely based on the fact it was a condition of employment she had to end the tenancy. The tenant seeks return of the  $\frac{1}{2}$  month rent deducted from her January 16, 2015 paycheque.

The tenant submits that she had provided her forwarding address to the landlord on January 19, 2015 and that at the time she submitted her Application for Dispute Resolution on February 10, 2015 she had not yet received the return of the security deposit. In support of her claim the tenant provided a copy of the cheque issued by the landlord for return of the deposit showing it was dated February 11, 2015. The landlord acknowledged the cheque was not issued within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

### Analysis

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after

the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As there is no evidence before me that the landlord violated a material term of the tenancy agreement and that the tenant informed the landlord of such a breach I find the tenant could not end the tenancy pursuant to Section 45(3).

Despite the tenant's claim that she no longer needed the rental unit because she no longer worked for the landlord I find that the tenancy agreement was separate from the employment contract. Further, I find even if the rental unit was required as condition of employment there is nothing in the *Act* that exempts either the landlord or the tenant from ending the tenancy in a manner that is outside of the *Act*.

As such, I find the tenant was required to provide the landlord with her notice to end the tenancy in accordance with Section 45 of the *Act*. While I accept that Section 44 of the *Act* stipulates that a tenancy ends if, among other reasons, the tenant vacates the rental unit, the tenant's obligation to pay rent is not excused if she fails to provide the landlord with her intention to end the tenancy in accordance with the requirements of Section 45.

Therefore, I find the landlord was entitled to rent for the period ending on January 31, 2015 and I dismiss this portion of the tenant's claim.

Section 38(1) of the *Act* stipulates that, unless the tenant has agreed in writing that the landlord may retain a security or pet damage deposit, a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Section 38(4) states that the landlord may retain an amount from a security deposit or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

I accept that the parties mutually agreed that the landlord would retain \$77.28 from the security deposit. I find the landlord was then required to provide the return of the balance of the deposit within the 15 days outlined in Section 38 of the *Act*. As the landlord received the tenant's forwarding address on January 19, 2015 I find the landlord had until February 3, 2015 to return the balance of the deposit to be compliant with Section 38(1).

As per the testimony of both parties I find the landlord failed to comply with the requirements of Section 38(1) and the tenant is therefore entitled to double the amount of the balance of the security deposit.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$285.22** comprised of \$520.44 double the security deposit and \$25.00 of the \$50.00 fee paid by the tenant for this application as she was only partially successful in her claim less \$260.22 of the security deposit already returned.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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, 2015

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Residential Tenancy Branch

