



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing and the tenant called one witness. The tenant and one of the landlords and the tenant's witness each gave affirmed testimony and the parties were given an opportunity question each other and the witness with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation required under the *Act* respecting the landlords' use of the rental property?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on February 1, 2013 and ended on March 1, 2015. Rent in the amount of \$1,175.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit in the amount of \$400.00 as well as a pet damage deposit in the amount of \$500.00, both of which are still held in trust with the landlords.

The rental unit is a suite in a side-by-side duplex that is also shared with the tenant's sister. A copy of the tenancy agreement has been provided which is in the name of the tenant and the landlords.

The tenant further testified that the landlords served the tenant with a notice to end the tenancy and has provided a copy for this hearing. The 1-page document is a 1 Month Notice to End Tenancy which is dated February 3, 2015 and contains an effective date of vacancy of April 1, 2015. The notice states in handwriting at the bottom of the form, "We are sorry to terminate your tenancy. As we have sold our house we now need to move (into the rental unit). We did tell you that when you rented that if we sold we would be moving into (the rental unit). We hope that you will find a nice place. Best of luck! According to the tenancy agreement, we would have to give one month's notice which we both signed." The tenant claims the equivalent of one month's rent as compensation for the landlord's use of the rental property.

The landlords told the tenant that no deposits would be returned, so the tenant didn't provide the landlords with a forwarding address in writing. No move-in or move-out condition inspection reports were completed.

**The tenant's witness** is the sister of the tenant who shared the rent and the deposits.

The witness further testified that they moved into the rental unit in February, 2013 and lived there 2 years. The witness occupied the basement and her sister occupied the upper level.

The tenant was given a notice to end the tenancy 2 years after the tenancy began because the landlords were taking over the home for their own use but the notice was an amended 1 Month Notice to End Tenancy and only 1 of 2 pages was served.

The witness also testified that there were no damages at move-out and a lady met with the tenants to get a key on the landlords' behalf and said the place looked fine and signed a document indicating that. A copy has been provided. The tenant ought to have been given compensation as required by law.

**The landlord** testified that there are numerous damages to the rental unit that far exceed the claims of the tenant. Photographs have been provided.

The landlord further testified that the tenancy agreement contains an addendum indicating that either party was required to give 1 month's notice to end the tenancy, and an agreement is binding. The landlords gave 60 days notice to end the tenancy and then the tenant moved out early giving the landlords 26 days notice.

The landlords have not made an application for dispute resolution and have not received the tenant's forwarding address in writing.

The landlords have not been landlords before, but due to damages that exist in the rental unit and the signed addendum, the landlords do not feel obligated to compensate the tenant.

### Analysis

The *Residential Tenancy Act* is clear with respect to ending a tenancy and with respect to security deposits and pet damage deposits. Where a landlord wishes to end a tenancy, the landlord must comply with the *Act*, which states that if a landlord wishes to move into a rental unit the landlord must give a 2 Month Notice to End Tenancy for Landlord's Use of Property and must select the appropriate reason on page 2 of the notice and serve both pages on the tenant. Also, where a landlord gives notice to end a tenancy for landlord's use of property, the landlord must compensate the tenant the equivalent of one month's rent. Once receiving the notice, the tenant may give the landlord 10 days written notice to move out earlier but the landlord's obligation to pay the compensation still remains. I accept that the addendum to the tenancy agreement provides for 1 month's notice and is silent with respect to compensation, however, where a term in a tenancy agreement is contrary to the law, it cannot be upheld. In this case, the notice given by the landlord is not in the approved form but states that it is issued for the landlords' use of the property and therefore, the landlord must compensate the tenant one month's rent, which I order.

The *Act* also requires a landlord to return a security deposit and a pet damage deposit to a tenant within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, or must make an application for dispute resolution claiming against the deposits within that 15 day period. If the landlord fails to do so, the landlord must be ordered to repay the tenant double. I have no application by the landlords claiming against the deposits, and the tenant has admittedly not provided the landlords with a forwarding address in writing. Therefore, I find that the tenant is not entitled to double. I order the landlords to return to the tenant the security deposit of \$400.00 and the pet damage deposit of \$500.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,125.00.

This order is final and binding and may be enforced.

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 22, 2015

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Residential Tenancy Branch

