



# Dispute Resolution Services

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 and an order for the return of his security deposit. Both parties participated in the conference call hearing with the landlord being represented by her daughter, BB.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed on most of the fundamental facts. The tenancy began on January 1, 2014 at which time the tenant paid a \$750.00 security deposit and rent was set at \$1,500.00 per month. In April 2015, the landlord served on the tenant a 2 month notice to end tenancy for landlord's use of property (the "Use Notice"). The Use Notice stated that the tenancy would end on June 30, 2015. On May 2, the tenants served on the landlord a notice that they intended to vacate the unit on June 1, 2015 (the "Tenant's Notice") and also advised her via text message that they would not be paying rent as they were entitled to compensation for the Use Notice. On May 2, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Rent Notice"), stating her opinion that they could not withhold rent until the month of June. The Rent Notice stated that the tenancy would end on May 12, 2015. The parties agreed that the landlord changed the locks to the rental unit on May 8, 2015.

The landlord's agent at the hearing, BB, was uncertain as to whether the landlord had received the tenant's forwarding address in writing. The tenant provided a copy of a photograph showing that the forwarding address was written on the Tenant's Notice. It appears that for some reason, the landlord obscured the forwarding address on the copy of the Tenant's Notice that she submitted to the Residential Tenancy Branch.

The tenant seeks to recover 1 month of rent as compensation under section 51(1) of the Act as well as his security deposit and the \$50.00 filing fee paid to bring his application.

### Analysis

I find that because the landlord served the Use Notice on the tenant, he was entitled to receive the equivalent of one month's rent, \$1,500.00, in compensation. Section 51(1.1) of the Act permits the tenant to withhold that amount from *the last month's rent*. Section 50 of the Act permits the tenant to do precisely what he did, which is to give the landlord at least 10 days' notice to end the tenancy earlier than the effective date of the Use Notice. Because the tenant served the landlord with the Tenant's Notice, the tenancy was to end on June 1, 2015, which was the effective date on the Tenant's Notice. This means that May was the last month of the tenancy and the tenant was entitled to withhold his rent in that month in order to receive the compensation to which he was entitled. Rather than accepting that the tenancy could both end the tenancy earlier than the effective date of the Use Notice and withhold his rent in that month, the landlord chose to attempt to unlawfully end his tenancy through serving on him an invalid Rent Notice and also changed the locks to the rental unit before the tenant had fully removed all of his belongings. The landlord's actions were illegal and egregious.

I find that the tenant is entitled to recover \$1,500.00 in compensation for having been served with the Use Notice. Although the tenant occupied the unit for part of May, the landlord unlawfully evicted him and in my view completely deprived him of the quiet enjoyment of the unit to which he was lawfully entitled and therefore I find that the landlord is not entitled to recover any rent for the period in which the tenant occupied the unit in May. I award the tenant \$1,500.00.

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenant paid a \$750.00 security deposit and vacated the rental unit on May 8 and I find that the landlord received the forwarding address in writing on May 2 when she received the Tenant's Notice. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenant double the security deposit. I therefore award the tenant \$1,500.00.

As the tenant has been successful in his claim, I find he should recover the \$50.00 filing fee and I award him that sum for a total award of \$3,050.00. I grant the tenant a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that at the hearing, the tenant alleged that the landlord did not use the rental unit for the purpose stated on the Use Notice, which was to use the rental unit as accommodation for a close family member. In her written submissions, the landlord acknowledged that the rental unit has been sold. In this situation, the tenant is entitled to make a claim for 2 months compensation pursuant to section 51(2) of the Act, but as that claim is not before me, I have made no finding of facts with respect to that potential claim. The tenant is entitled to file this claim against the landlord provided he acts within 2 years of the end of the tenancy.

I further note that the landlord believes that she incurred costs as a result of the tenant's failure to adequately clean and repair the unit. The landlord is free to file a claim against the tenant for a monetary order within 2 years of the end of the tenancy.

### Conclusion

The tenant is granted a monetary order for \$3,050.00.

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: October 06, 2015

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Residential Tenancy Branch

