



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property;
2. For a monetary order for compensation for loss or other money owed;
3. Return all or part of the security deposit; and
4. To recover the cost of filing the application.

### Landlords' application

This matter was set for hearing by telephone conference call at 2:30 P.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant. Therefore, as the landlords did not attend the hearing by 2:40 P.M, and the tenant appeared and was ready to proceed, I dismiss the landlords' application without leave to reapply.

### Tenant's application

The tenant attended the hearing. As the landlords 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 respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 22, 2015, Canada post tracking numbers were provided as evidence of service. Further, I am satisfied the landlords are aware of the hearing as they filed their application which was joined with the tenant's application.

I find that the landlords have been duly served in accordance with the Act.

### Issues to be Decided

Is the tenant entitled to a monetary order for money owed?

Is the tenant entitled to the return of the security deposit?

### Background and Evidence

The tenancy began on July 1, 2010. Rent in the amount of \$1,900.00 was payable on the first of each month. The tenant paid a security deposit of \$1,000.00. The tenancy ended on October 31, 2015.

The tenant claims as follows:

a.	Overpayment of rent	\$1,900.00
b.	Double security deposit	\$2,000.00
c.	Interest on deposit and overpayment of rent	\$ 100.00
d.	Move out fee charged by strata	\$ 200.00
e.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$4,200.00</b>

### Overpayment of rent

The tenant testified that the landlord did not provide them with proper notice to vacate the rental unit and they were told that the landlord's sister was moving in. The tenant testified that they should be entitled to recover overpayment of rent for October 31, 2015, as that is the equivalent that they were entitled to receive had they received proper notice.

Filed in evidence is an email dated September 15, 2015, which reads in part,

“... As per our phone conversation, my parents ..., the owners of ..., wants to use the unit for their daughter. So if you find another place and vacated the unit before October 31, 2014 or sooner...”

### Double security deposit

The tenant testified that the landlord did not return their security deposit within 15 days of the tenancy ending. The tenant stated that although they did not provide the landlord with their forwarding address at the end of the tenancy the landlord was aware of their business address.

The tenant testified that their address is also in their application. The tenant seeks double the security deposit and interest.

#### Move out fee charged by strata

The tenant testified that they paid the Strata a fee from moving. The tenant seeks to recover the cost they paid to the strata. The tenant confirmed no amount was paid to the landlord.

#### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Overpayment of rent

Section 49 provides that in order to end the tenancy for landlord's use of the property the landlord must give the tenant a 2 Month Notice to End Tenancy in the approved form.

Section 51 of the Act provides for compensation to a tenant who has received a Notice to End Tenancy under section 49. Section 51(1) provides:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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 tenant was not provided a Notice under section 49. However, section 5 of the Act, provides that a landlord and tenant cannot avoid the Act.

I accept the tenant's undisputed testimony that they vacated the rental unit because the landlord's requested possession for landlord's use of the property based on the email filed in evidence. Therefore, I find the tenant is entitled to recover the equivalent of one month's rent in the amount of **\$1,900.00**.

#### Double security deposit

Under section 38 of the Act, the tenant is required to provide the landlord with their forwarding address at the end of the tenancy. In this case, the tenant was relying on landlord to use the tenant's business address for the return of the security deposit. However, it is the tenant's responsibility to provide or at the very least confirm their forwarding address in writing at the end of the tenancy.

Although I accept the tenant's address was provided in their application, however, that information should have been provided in a separate, earlier document. Therefore, I find the tenant is not entitled to double the security deposit.

As I have dismissed the landlord's application to retain the security deposit. I find the tenant is entitled to the return of their security deposit in the amount of **\$1,000.00**.

#### Move out fee charged by strata

In this case, the tenant paid the strata a move-out fee; I find the tenant has failed to prove a violation of the Act, by the landlord. Therefore, I dismiss this portion of the tenants claim.

Further the tenant has requested a \$100.00 interest on the overpayment of rent and the security deposit. However, there is no authority under the Act for me to grant interest on a monetary order or an overpayment of rent.

Further, I have determined that there is no interest on the security deposit as determined by the Act. Therefore, I dismiss this portion of the tenant's claim.

I find that the tenant has established a total monetary claim of **\$2,950.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order as described above.

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: January 05, 2016

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Residential Tenancy Branch

