



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to return his security deposit. Both parties participated in the conference call hearing. No issues were raised with respect to the exchange of evidence.

The tenant's application initially included a co-applicant, DH. At the hearing, the tenant advised that DH had passed away and stated that he did not wish to name the estate as an applicant but wished to remove DH as an applicant. I found it appropriate to do so and the style of cause in this decision has been amended accordingly.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began July 1, 2013 and ended September 1, 2015. They further agreed that monthly rent was set at \$1,500.00 per month and that the tenants paid a \$750.00 security deposit. They further agreed that originally the applicant tenant had rented the unit with 2 other co-tenants who eventually vacated and were replaced by 2 other co-tenants who were accepted as tenants by the landlord. The parties also agreed that the tenancy ended pursuant to a 2 month notice to end tenancy in which the landlord stated that he intended to reside in the rental unit and that the tenant provided his forwarding address to the landlord in a telephone call on September 3 or 4, 2015.

At the hearing, the tenant acknowledged having received from the landlord on October 13, 2015, \$750.00 which represented his security deposit.

The tenant testified that after he vacated the rental unit, he saw that the landlord was conducting renovations to the unit and had not moved in. The tenant seeks an award the equivalent of 2 months' rent pursuant to section 51 of the Act.

The landlord testified that after the tenancy ended, he saw the condition of the rental unit and determined that it required renovations before he moved in. He testified that most of his belongings are now in the unit and when the bathroom was completed the week after this hearing, he would begin residing in the unit. The tenant did not respond to this testimony.

The tenant seeks to recover \$500.00 in rent paid for the month of August. The tenant testified that it had been the practice of him and his 2 co-tenants to each pay the landlord \$500.00 each month totaling the \$1,500.00 due. Some of the money was paid directly to the landlord by Social Services. He testified that since he was given a 2 month notice to end tenancy, he was entitled to one free month's rent and therefore should be repaid the monies paid in August.

The landlord acknowledged that the tenant was entitled to a free month's rent but testified that the entire \$1,500.00 was not paid for the month of July. He testified that when the tenant paid \$500.00 in August, he applied it to the rental arrears for July. The tenant acknowledged that the full amount of rent was not paid in July but stated that his portion of the rent had been paid.

The tenant seeks to recover \$750.00 which represents the doubling of his security deposit. He testified that the landlord did not return his security deposit to him within 15 days of the date he verbally provided his forwarding address and therefore, although he received the base amount of the deposit, he was entitled to double his deposit pursuant to section 38.

The landlord testified that he sent the security deposit to the forwarding address provided by the tenant on the telephone, but it was returned to him. The landlord testified that the address was either incorrect or the tenant had moved. The tenant acknowledged that he had moved several times after vacating the rental unit.

### Analysis

First addressing the tenant's claim for an award equivalent to 2 months' rent, section 51 of the Act provides as follows:

**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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Section 51(2) requires that the landlord use the rental unit for the stated purpose within a reasonable period from the effective date of the notice to end tenancy. The landlord testified and the tenant did not dispute that he performed renovations to the unit and is now in the process of moving into the unit with an intention to reside therein. This means that the landlord acted to achieve the stated purpose in less than 7 months. I find that this is a reasonable period of time in which to prepare the unit for his residency and for that reason, I find that the landlord has not contravened the Act. I find that the landlord has acted to accomplish the stated purpose and therefore the tenant is not entitled to an award of double the monthly rent. I therefore dismiss this claim.

Although the tenant and his co-tenants each paid the landlord separately, the parties agreed that they rented the unit under a single tenancy agreement and that they did not act independently in separate tenancies with the landlord. Because the tenants were co-tenants, I find that they were jointly and severally liable for the full amount of rent

each month, which means that if the tenant's co-tenants did not pay their share of the rent, he could be held responsible to pay it. It is a generally accepted accounting practice that when payments are made for services, those payments are first applied to any arrears owing. I find it reasonable that the landlord applied the tenant's \$500.00 payment in August to the arrears owing for the month of July. As the tenant therefore did not pay rent for the month of August, I find that the tenant received the one free month of rent to which he is entitled under section 51(1). I dismiss the claim.

Turning to the security deposit, section 38(1) provides that the landlord is obligated to pay the security deposit to the tenant within 15 days of the later of the end of the tenancy and the date the landlord receives the forwarding address *in writing*. The tenant has not given the landlord his forwarding address in writing. The Act requires the tenant to provide the address in writing specifically to avoid the situation which may have taken place in these circumstances, which is the landlord sending the deposit to an address given verbally which was either misspoken or misheard and turns out to be an incorrect address. Because the tenant did not give the landlord his address in writing, I find that the 15 day time limit was not triggered and therefore the landlord cannot be held responsible for the prescribed penalty. I dismiss the claim.

### Conclusion

The tenant's claim is dismissed in its entirety.

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 11, 2016

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Residential Tenancy Branch

