



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNSD, MNDC, RR

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 9, 2016
- b. An order to cancel the 10 day Notice to End Tenancy dated May 9, 2016
- c. A monetary order in the sum of \$380.
- d. An order for the return of all or part of the pet damage deposit or security deposit.
- e. An order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.
- f. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy and the one month Notice to End Tenancy was served on the Tenant by placing them in her mailbox on May 10, 2016. I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides.

### Preliminary Matter

The tenant vacated the rental unit on May 20, 2016. She stated she was no longer interested in living in the rental unit. As a result I ordered that the applications to cancel the 10 day Notice to End Tenancy, to cancel the one month Notice to End Tenancy and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided be dismissed without liberty to re-apply.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order to recover her security deposit?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

On May 1, 2014 the tenant entered into a month to month tenancy agreement with the previous owner. The tenancy agreement provided that the tenant(s) would pay rent of \$760 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$380 on May 1, 2014. The property was sold with the respondent taking possession on May 1, 2016.

There is a dispute between the parties as to whether they exchanged information as to where and how to contact each other. Further, the landlord takes the position the tenant is not a tenancy as rent has not been paid. It is not necessary for me to make a determination with the respect to those issues. The Tenant's claim of \$380 is for the return of her security deposit.

The tenant testified she provided the landlord with her forwarding address in writing by mailing, by registered mail to where the landlord resides on June 2, 2016. The landlord testified under oath that she has not receive letter which contained the tenant's forwarding address. The tenant searched the Canada Post tracking service and it indicated that the landlord's husband picked the package up on June 6, 2016. The landlord testified her husband did not give it to her.

### Analysis:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

I determined the tenancy ended on May 20, 2016 when the Tenant vacated the rental unit. I further determined the tenant provided the landlord with her forwarding address in writing by mailing by registered mail on June 2, 2016. The Act provides it is deemed received 5 days later. The tenant testified the Canada Post tracking service indicates

her husband picked up the package on June 6, 2016. I determined the tenant has failed to wait the required 15 days from when the landlord receives the Tenant's forwarding address in writing to file her Application for the return of the security deposit. As a result I determined the Tenant's claim is premature. I ordered that the Application for a monetary order and for the return of the security deposit be dismissed with liberty to re-apply. Liberty to reapply is not an extension of any applicable limitation period.

There is a great deal of animosity between the parties. I make no determination as to whether this is a tenancy and/or whether the respondent has the right to retain the security deposit. At the hearing I strongly encouraged the parties to seek legal advice immediately. The landlord was also warned of the requirements under the Act of filing a claim within 15 days of the later of the end of the tenancy or when the landlord receives the Tenants forwarding address in writing.

#### Conclusion

I ordered that the tenant's applications to cancel the 10 day Notice to End Tenancy, to cancel the one month Notice to End Tenancy and for an order to reduce order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided be dismissed without liberty to re-apply. I ordered that the tenant's application for a monetary order and for the return of the security deposit be dismissed with liberty to re-apply. I dismissed the tenant's application to recover the cost of the filing as the tenant has not been successful with this application.

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: June 16, 2016

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Residential Tenancy Branch