



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC MNDC MNSD FF

### **Introduction**

Only the tenant attended the hearing. They gave sworn evidence that two Notices to End Tenancy had been served on them; one was a Two Month Notice for Landlord's Use of the Property dated June 9, 2016 to be effective August 30, 2016. The second was a One Month Notice to End Tenancy for Cause dated June 26, 2016. The tenants gave sworn testimony that they served their Application for Dispute Resolution and Amendments personally with witnesses and took photographs. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A refund of one month's rent pursuant to a signed agreement;
- b) An Order to return double the balance of the security and pet damage deposits pursuant to Section 38;
- c) To cancel the Notice to End Tenancy for cause; and
- d) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy? Or is the tenant entitled to any relief?

Has the tenant proved on the balance of probabilities that they are entitled to a refund of one month's rent and the return of double the security and pet damage deposits according to section 38 of the Act? Are they entitled to recover their filing fee?

### **Background and Evidence**

Only the tenants attended although the landlord was served with the Application/Notice of Hearing. The tenants were given opportunity to be heard, to present evidence and make submissions. The tenants had a fixed term lease commencing December 1, 2015 which expired November 30, 2016. Rent was \$1000 a month and a security deposit of \$500 and a pet damage deposit of \$500 were paid. The tenants said the landlord served them a Two Month Notice to End Tenancy in June 2016 (in evidence). However, they said when the landlord realized they had a fixed term lease which could not be ended until the end of the fixed term and it would cost one month's free rent as

well, he served them with a one month Notice to End Tenancy for cause on June 26, 2016. They said it had no basis in fact but speculated it was merely an attempt to get around the provisions of the Act. Although they vacated on July 1, 2016, they request that the one month Notice be cancelled.

The parties signed a Mutual Agreement to End Tenancy on June 12, 2016 to end the tenancy on July 31, 2016. They said they vacated on July 1, 2016 because things had escalated and they feared for their safety. I did not have a copy of the Agreement in evidence but the tenant read it to me. She read a paragraph "Compensation will be paid in the form of the last month's rent for the full amount payable under the tenancy agreement". The Agreement which was in evidence was faxed to me later. The paragraph which the tenant read had a handwritten note at the end of it which said, "or not pay rent for July 2016". The tenants provided no evidence that they had paid rent for July 2016 and the Mutual Agreement states the tenants agree to vacate on July 31, 2016 at 1:00 p.m.

The second part of the Mutual Agreement states the tenants expect the security deposits of \$1000 will be refunded in full, contingent upon the condition inspection at the end of the tenancy. The condition inspection report at the end of the tenancy authorizes the landlord to deduct \$75 from the deposits for drywall work. It is dated July 11, 2016 and the tenants' forwarding address is on it.

The tenants said the landlord is refusing to give them their mail and requests an Order that he do so.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

I find the landlord provided insufficient evidence to support the Notice to End Tenancy for cause and he did not attend the hearing to support it. The One Month Notice to End Tenancy for Cause dated June 26, 2016 is hereby cancelled.

In respect to the security and pet damage deposits, I find on preponderance of the relevant evidence for this matter;

**Section 38(1)** of the Act provides as follows (**emphasis mine**)

**38(1)** Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1) (a) the date the tenancy ends, and

38(1) (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1) (d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the tenants vacated on July 1, 2016 and provided their forwarding address in writing on July 11, 2016. I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under Section 38(6) which provides:

**38(6)** If a landlord does not comply with subsection (1), the landlord

38(6) (a) may not make a claim against the security deposit or any pet damage deposit, and

38(6) (b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$500.00 and a pet damage deposit of \$500. I find the tenants authorized him to retain only \$75 of the security deposit. Section 38(4) states *A landlord may retain an amount from a security deposit or a pet damage deposit if, (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.*

I find the landlord was obligated under Section 38 to return the balance of \$925 as he did not seek to retain it through Dispute Resolution. The amount which is *doubled* is the balance of the deposits. As a result I find the tenant has established an entitlement claim for \$925 x 2 and is further entitled to recovery of the \$100.00 filing fee.

In respect to the tenants' claim for the refund of one month's rent based on the provisions of the Mutual Agreement to End Tenancy, I find insufficient evidence that the

tenants paid rent for July 2016. I find the Mutual Agreement provided in evidence by the tenant does not end the tenancy until July 31, 2016 and specifically states that compensation would be paid in the form of the last month's rent [\$1000] **or not pay rent for July 2016 (emphasis mine)**. I did not hear the tenant read this emphasized addition on the telephone so I was unable to discuss it with them. They did vacate July 1, 2016 and never said they paid July rent. Since I find insufficient evidence that the tenants paid July rent and the tenancy did not end per agreement until July 31, 2016, I find the tenants not entitled to the compensation of \$1000.

### **Conclusion:**

I find the tenants entitled to a monetary order under section 67 of the Act as calculated below. I give them leave to reapply for a refund of July 2016 rent with proof of payment.

Security Deposit balance (500-75)	425.00
Pet Damage deposit	500.00
Double security and pet deposits	925.00
Filing fee	100.00
<b>Total Monetary Order to Tenants</b>	<b>1950.00</b>

**I HEREBY ORDER that the landlords PAVINDER KAUR KIRAMATHYPATHY AND EZEKIEL KIRAMATHYPATHY release ALL THE TENANTS' MAIL TO THEM FORTHWITH.**

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: August 10, 2016

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Residential Tenancy Branch