



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL CNR MNSD O OLC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on July 13, 2016. The Tenant filed seeking an order to cancel a 2 Month Notice to end tenancy for cause, the return of her security and pet deposits, an order to have the Landlords comply with the *Act*, regulation and tenancy agreement; for other reasons, and to recover the cost of the filing fee. The Tenant filed an amended application on August 11, 2016 indicating she had been issued a 10 Day Notice to end tenancy for unpaid rent.

The hearing was conducted via teleconference and was attended by the Tenant and her assistant. No one was in attendance on behalf of the Landlords. The Tenant provided affirmed testimony that each Landlord was served notice of this application and this hearing by registered mail on July 15, 2016. Canada Post tracking information was submitted into evidence as recorded on the front page of this Decision.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Tenant, I find each Landlord was deemed served notice of this application and hearing on July 20, 2016, pursuant to section 90(a) of the *Act*. As such, I continued to hear the undisputed evidence of the Tenant.

### Issue(s) to be Decided

1. Has the Tenant sought to cancel the 2 Month Notice to end tenancy for Landlord's use of the property signed and dated August 26, 2016?
2. Should the 10 Day Notice to end tenancy dated August 1, 2016 be upheld or cancelled?
3. Should the Landlords be ordered to comply with the *Act*, Regulation, and/or tenancy agreement?

### Background and Evidence

The Tenant entered into a month to month tenancy agreement which began on March 1, 2016. Rent of \$1,800.00 was payable on the first of each month. On February 21, 2016 the Tenant paid \$900.00 as the security deposit plus \$900.00 as the pet deposit. The Landlords did not complete or provide the Tenant with a copy of a move in condition inspection report form.

The Tenant testified the Landlords sent her an email near the beginning of July 2016 advising her that the property had been sold and she was required to vacate the rental unit. The Tenant informed the Landlords they were required to serve her with a proper 2 Month Notice and were required to provide her compensation equal to one month's rent. She stated that when the Landlords refused to issue her the Notice or provide her with the required compensation she filed her application for Dispute Resolution on July 13, 2016 seeking to obtain a 2 Month Notice, not to cancel a notice, and to obtain an order for the one month's compensation.

Following the filing of her application for Dispute Resolution, the Tenant stated she received a 1 Month Notice immediately before or at the same time she served the Landlords her notice to end her tenancy. She indicated she had sent an email on July 31, 2016 with her notice attached and then sent a printed signed copy of her notice by registered mail on August 1, 2016. The Tenant testified her notice document was dated July 31, 2016 listing an effective date of August 31, 2016 and included her forwarding address.

The Tenant submitted evidence that prior to her August 1, 2016 rent being due, she found a 2 Month Notice to end tenancy posted to her door on August 1, 2016. A copy of that 2 Month Notice was submitted into evidence by the Tenant and received at the Residential Tenancy Branch (RTB) on August 10, 2016. Upon review of the 2 Month Notice in evidence I noted the Landlord had dated their signature with a future date of 26-08-2016. The effective date of the 2 Month Notice was listed as being 30 Sept 2016.

The Tenant stated she did not pay her August 1, 2016 rent as August 2016 was going to be her last month of her tenancy. She stated she chose to take August 2016 rent as the compensation equal to one month's rent that was due to her for being served the 2 Month Notice; therefore, no rent was payable for August.

The Tenant stated she was subsequently served a 10 Day Notice to end tenancy that was dated 01-08-2016 (August 1, 2016). The Tenant asserted the 10 Day Notice was posted to her door on August 5, 2016.

The Tenant testified the Landlords have told her they will not be returning her security and pet deposits. She submitted the Landlords began sending her emails stating they were going to deduct costs from her deposits for damages that were in existence prior to the start of her tenancy, which she said is the reason why she filed seeking to have

an order to have both her deposits returned and to have the Landlords comply with the *Act*.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

Given the evidence before me, in the absence of any evidence from the Landlords who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by her documentary evidence.

Section 51(1) of the *Act* stipulates that 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.

Section 51(1.1) of the *Act* provides that 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.

Section 50(1) of the *Act* stipulates that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

In this case, pursuant to section 62 of the *Act*, I find the Tenant was served a 2 Month Notice to end tenancy on August 1, 2016; albeit that 2 Month Notice listed an incorrect date indicating it was signed on 26/08/2016. I further find the Tenant ended the tenancy in accordance with section 50(1) of the *Act* when she served the Landlord her written notice via registered mail on August 1, 2016.

Based on the above, I find the Tenant had the authority to withhold the payment of her August 1, 2016 rent as the compensation equal to one month's rent provided for in section 51 subsections (1) and (1.1) of the *act*, as August would be the last month of this tenancy. Accordingly, I conclude the 10 Day Notice to end tenancy dated August 1, 2016 to be invalid and of no force or effect.

In regards to the Tenant's \$900.00 security deposit and \$900.00 pet deposit I hereby Order the Landlords to comply with the *Act* and disburse the security and pet deposits in accordance with section 38 of the *Act*, as reproduced at the end of this Decision.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

The Landlords are hereby ordered to pay the Tenant the sum of **\$100.00** forthwith.

In the event the Landlords do not comply with the above Order, the Tenant has been issued a Monetary Order for **\$100.00**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

#### Conclusion

The Tenant was successful with her application and was awarded the return of her \$100.00 filing fee. The 10 Day Notice dated August 1, 2016 was found to be invalid and of no force or effect.

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 26, 2016

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Residential Tenancy Branch

## Residential Tenancy Act

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

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (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;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

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

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

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

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

[Reproduced as written]