



# Dispute Resolution Services

Page: 1

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. The claim is comprised of two parts: (a) return of double the security and pet damage deposit; and (b) payment of the penalty under Section 51(2) of the Act. The landlord failed to attend the hearing despite having been served with the tenant's Application for Dispute Resolution and Notice of Hearing by registered mail on February 5, 2016.

### Background & Evidence

This tenancy began on June 11, 2015 and ended on December 11, 2015. The rent was \$800.00 per month. A security deposit and pet damage deposit totalling \$480.00 was paid at the start of the tenancy. On August 8, 2018 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. The Notice indicated that the landlord required the rental unit for occupation by the landlord or a close family member. Pursuant to the Notice, the tenant vacated the rental unit on December 11, 2015 and provided the landlord with her forwarding address in writing on the same day. A copy of the letter was submitted into evidence.

To date, the tenant has not received any of her security or pet damage deposit back from the landlord. The tenant also testified that the landlord has not filed an application claiming against the deposit.

As well, the tenant testified that on January 31, 2016 she went to the rental unit and knocked on the door. A male tenant answered the door and when asked – he advised that he was not related to the landlord and that he was the new tenant in the rental unit.

## Analysis

### Return of Double the Security Deposit

Section 38(1) of the *Act* says that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

- repay any security deposit or pet damage deposit to the tenant with interest; or
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) then goes on to say that if a landlord does not comply with the above, the landlord may not make a claim against the deposit(s) and **must pay the tenant double** the amount of the security deposit, pet damage deposit, or both, as applicable.

In the present case, the landlord has not returned the tenant's security and pet damage deposit and has not filed a claim against the deposit. As a result, the landlord must pay to the tenant double the amount of the deposit in the amount of \$960.00.

### Section 51(2) Penalty

Section 51 of the Act states as follows:

#### **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.

...

- (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.

In the present case, the tenant is seeking compensation pursuant to Section 51(2) on the basis that the landlord did not use the rental unit for the purpose stated in the Notice for at least 6 months beginning within a reasonable period after the effective date of the notice.

I am satisfied based on the testimony of the tenant which I found to be forthright and credible that the tenant has established this claim in the amount of \$1600.00 which is the equivalent of two months' rent.

### Conclusion

I find that the tenant has established a total monetary claim of \$2560.00 as set forth above. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 27, 2016

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Residential Tenancy Branch

