



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on January 29, 2016 for the following reasons: for the return of his security and pet damage deposits (herein referred to as the “Deposits”); for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), the regulation or tenancy agreement; and, to recover the filing fee from the Landlords.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlords during the 13 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that the Landlords were served with a copy of the Application and the Notice of Hearing documents on February 3, 2016 by registered mail. The documents were sent to the service address detailed on the notice to end tenancy which was served to the Tenant during this tenancy. The Tenant referred to his documentary evidence to show the documents had been sent back to him as unclaimed. That evidence detailed the Landlords’ address to which the Tenant has sent the documents to. That address was consistent with the Landlord’s address on the notice to end tenancy. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a refusal or neglect to pick up mail. Based on the undisputed evidence of the Tenant, I find the Landlords were deemed served with the required documents on February 8, 2016 pursuant to the Act.

### Issue(s) to be Decided

- Is the Tenant entitled to the return of his Deposits?

- If so, should the amount of the Deposits be doubled?
- Is the Tenant entitled to monetary compensation pursuant to Section 51 of the Act as a result of the Landlords ending the tenancy?

### Background and Evidence

The Tenant testified that this tenancy began on August 1, 2015. A written tenancy agreement was completed for a month to month tenancy. However, the tenancy was ended by the Landlords when they served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"). The Notice was provided into evidence was served to the Tenant on December 2, 2016 for owner occupancy.

Rent under the agreement was \$850.00 payable on the first day of each month. The Tenant paid the Landlords a \$450.00 security deposit and a \$450.00 pet damage deposit at the start of the tenancy which the Landlords still retain.

The Tenant testified that shortly after the Landlords served him with the Notice on December 2, 2015 he provided the Landlords with written notice on December 5, 2015. This informed the Landlord that pursuant to the Notice he was going to be vacating the rental unit early and was giving them the required ten days of notice to vacate at the end of December 2015 which he did.

The Tenant testified that he provided the Landlord with his forwarding address on a handwritten letter which he sent to the Landlords on January 8, 2016. The tenant provided the Canada Post tracking number into evidence to verify this method of service and stated that this had been signed for and received by the Landlords on January 11, 2016. The Tenant confirmed that he had not received his compensation payable to him under the Notice or any of his Deposits back. The Tenant also confirmed that he had not given the Landlords any consent for them to make deductions or withhold the Deposits or his compensation.

### Analysis

Firstly I turn my mind to the Tenant's claim for the return of his Deposits. The Act contains comprehensive provisions on dealing with a tenant's Deposits. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

In this case, I accept the undisputed evidence that this tenancy ended at the end of December 2015. I also accept the Tenant's oral and documentary evidence that the Landlords were provided with his forwarding address on January 8, 2016 in the form of a handwritten letter sent by registered mail which they received on January 11, 2016. Therefore, the Landlords would have had until January 23, 2016 to deal properly with the Tenant's Deposits pursuant to the Act.

There is no evidence before me that the Landlords made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to withhold it. Therefore, I find the Landlords failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The Deposits were held in trust for the Tenant by the Landlords. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of Deposits or to deductions to be made from them, the landlord must file an Application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that a landlord feels they are entitled to keep the Deposits, based on unproven claims. A landlord may only keep Deposits through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the Deposits. Based on the foregoing, I find the Tenant is now entitled to double the return of his Deposits in the amount of \$1,800.00.

Secondly, I turn my mind to the Tenant's Application for monetary compensation as a result of the Landlords ending the tenancy. Section 49(3) of the Act allows a landlord to end a tenancy for owner occupancy. I accept the Tenant was served with a Notice under Section 49 of the Act. I also accept that the Tenant accepted the Notice and moved out of the rental suite after giving the required written notice pursuant to Section 50(a) of the Act.

Section 51(1) of the Act provides that if a tenant has been served with a Notice, a landlord must compensate the tenant with an amount equivalent to one month's rent payable under the tenancy agreement. Section 49(3) states that if a tenant ends a tenancy earlier than the vacancy date on the Notice by giving written notice to the

landlord, this does not affect the tenant's right to the one month's compensation payable. This is also explained on page two of the Notice. The Act continues to explain that this compensation is to be paid by the landlord to the tenant at the end of the tenancy. I accept that rent under the agreement was payable in the amount of \$850.00. Therefore, the Landlords must pay the Tenant \$900.00 in compensation pursuant to the Act.

The Tenant also made monetary claims for costs associated with mailing of documents for this hearing. The Tenant was informed during the hearing that the Act does not allow for costs associated with preparation and service of documents for dispute resolution hearings, which I hereby dismissed.

As the Tenant has been successful in this matter, I also award the Tenant the filing fee of \$100.00 pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is \$2,750.00. The Tenant is issued with a Monetary Order which must be served on the Landlords. The Tenant may then file and enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlords fail to make payment in accordance with the Tenant's written instructions. The Landlords may also be liable for costs incurred by the Tenant for enforcing the order. Copies of this order are attached to the Tenant's copy of this Decision.

### Conclusion

The Landlords breached the Act by failing to deal properly with the Tenant's Deposits and not paying him compensation for ending the tenancy. Therefore, the Landlords are ordered to pay the Tenant \$2,750.00. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 29, 2016

---

Residential Tenancy Branch