



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

### Issues

Is the tenant entitled a monetary order for compensation for damage or loss?

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenancy began on June 1, 2011 with a monthly rent of \$990.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$495.00 at the start of the tenancy. The landlord returned \$150.00 of this security deposit to the tenants at the end of the tenancy.

On December 29, 2015, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of February 29, 2016.

The tenant vacated the rental unit on January 15, 2016 after provided the landlord with written 10 Day Notice to end the tenancy early following the landlord's 2 Month Notice. The tenants had paid rent for the full month of January 2016 and the landlord reimbursed the tenants for the half month's rent for January 15-31<sup>st</sup>.

The tenants are claiming the equivalent of one month's rent as compensation for notice to end tenancy for landlord's use of property. The tenants claim they did not get one month free rent under the Act.

The tenants are also claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants provided the forwarding address to the landlord in writing on January 29, 2016.

The landlord disputes the one month free rent stating the tenants knew her situation of needing the rental unit for her family and agreed to vacate upon the landlord providing at least 2 months' notice.

The landlord acknowledged receiving the forwarding address and confirms that she returned \$150.00 of the security deposit and retained the rest for damages.

### Analysis

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

The landlord has not provided the tenant's with an equivalent of one month's rent. The landlord reimbursing the tenants for half months' rent for January was a separate requirement for the landlord as the tenant's had provided the required notice to end the tenancy early and vacated the rental unit on January 15, 2016.

I allow the tenants claim for an amount equivalent to one month's rent and award an amount of \$990.00.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I find the tenants did provide a forwarding address in writing to the landlord. The tenants security deposit was not refunded in full within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$840.00, which is double the original security deposit of \$495.00, less the \$150.00 returned by the landlord.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1930.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1930.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: October 06, 2016

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Residential Tenancy Branch