



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, MNSD, OLC, FF  
CNL, MNDC, MNSD, OLC, RPP, FF

### Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenants which have been joined to be heard together. In the first application the tenants have applied for the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for return of all or part of the pet damage deposit or security deposit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The second application claims the same relief in addition to a request for an order that the landlord return the tenants' personal property.

One of the tenants and the landlord attended the hearing and each gave affirmed testimony. The parties have also provided evidentiary material to the Residential Tenancy Branch, however during the course of the hearing it was determined that the tenants did not provide a copy of the tenants' evidentiary material to the landlord, and the tenants have received the landlord's evidentiary material. The Rules of Procedure require both parties to exchange evidence well in advance of the hearing. Since the tenants have not done so, none of the tenants' evidence can be considered. All evidence of the landlord has been reviewed and is considered in this Decision.

Further, during the course of the hearing the parties agreed that the tenants vacated the rental unit on October 1, 2016, and the tenants withdraw the application for an order cancelling the notice to end the tenancy.

The tenant also testified that the application for return of the tenants' personal property relates to return of the security deposit.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation pursuant to Section 49 of the *Residential Tenancy Act*?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?
- Should the tenants recover the filing fees for the 2 applications?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on July 1, 2015 and was to expire on August 1, 2017, however the tenancy actually ended on October 1, 2016. Rent in the amount of \$1,350.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. Prior to the commencement of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,350.00 which is still held in trust by the landlord, and no pet damage deposits were collected.

The tenant further testified that on September 1, 2016 the landlord served the tenants personally with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided by the landlord. It is dated August 31, 2016 and contains an effective date of vacancy of October 31, 2016. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

On September 14, 2016 the tenants gave the landlord written notice to end the tenancy earlier by personally handing the notice to the landlord which stated that the tenants will be moving out of the rental unit on October 1, 2016 and containing the tenants' forwarding address. The landlord gave to the tenants a cheque for \$2,700.00 post-dated to November 15, 2016, a copy of which has also been provided by the landlord.

The tenants claim double the amount of the security deposit, or \$2,700.00 for the landlord's failure to return it within 15 days, as well as compensation for the 2 Month

Notice to End Tenancy for Landlord's Use of Property and recovery of the 2 filing fees of \$100.00 each.

**The landlord** testified that the tenant was actually served with the 2 Month Notice to End Tenancy for Landlord's Use of Property on August 31, 2016.

The parties met at the rental property on October 1, 2016 and because the landlord had 15 days to return the security deposit and the notice ending the tenancy was effective at the end of October, 2016, the landlord made the cheque payable on November 15, 2016. The landlord asked the tenant to return the cheque and the landlord would issue a new one, but the tenant refused and the landlord didn't want the tenant to have 2 cheques.

The landlord has not yet moved into the rental unit, but is presently renovating and will be moving in once the renovations are complete.

### Analysis

Firstly, the *Residential Tenancy Act* states that a landlord who gives a 2 Month Notice to End Tenancy for Landlord's Use of Property, must give to the tenant at the end of the tenancy or sooner the equivalent of 1 month's rent as compensation. It also states that a tenant may end the tenancy earlier by giving the landlord no less than 10 days written notice. In this case, the tenants gave the landlord written notice on September 14, 2016 to vacate the rental unit effective October 1, 2016. The landlord gave the tenants a cheque, but it's post-dated to a date well beyond the effective date of the tenants' notice. I find that the tenants have established a claim in the amount of \$1,350.00 as compensation required by the *Act*.

The *Act* also requires a landlord to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord fails to do so, the landlord must repay double the amount. In this case, I find that the tenancy ended on October 1, 2016 and the landlord received the tenants' forwarding address in writing on September 14, 2016. The landlord included recovery of the security deposit in the post-dated cheque, but the post-date is beyond the 15 days provided in the *Act*. I accept the testimony of the landlord that the tenant didn't return the post-dated cheque, however that does not negate the landlord's responsibility in that regard; the landlord could very easily have put a stop-payment on the previous cheque and provided the tenants with another. In the circumstances I find that the tenants are entitled to double the amount of the security deposit.

With respect to the filing fee, I see no reason that the tenants had to make 2 applications claiming the same relief. Therefore, since the tenants have been successful with the application, the tenants are entitled to recovery of one of the filing fees, in the amount of \$100.00.

In summary, I find that the tenants have established a claim in the amount of \$1,350.00 as compensation pursuant to Section 49 of the *Residential Tenancy Act* as well as double the amount of the security deposit and recovery of a filing fee of \$100.00, for a total of \$4,150.00. The landlord must pay the \$4,150.00 to the tenants and may put a stop payment on the post-dated cheque.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,150.00.

This order is final and binding and may be enforced.

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: November 04, 2016

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Residential Tenancy Branch