



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNDC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$8783.89.
- b. An order for the return of the security deposit.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on landlords by mailing, by registered mail to where the landlords reside on September 6, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on September 1, 2011. The rent was \$1250. The tenants paid a security deposit of \$625 prior to the start of the tenancy. The rent was subsequently increased to \$1365.

On May 27, 2016 the landlord served a 2 month Notice to End Tenancy on the Tenants. The grounds set out in the Notice was that "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The tenancy ended on July 31, 2016.

On August 12, 2016 the landlord gave the tenants a cheque in the sum of \$483.42. The landlord's withheld \$175 for a moving out fee charged by the Strata Corporation. They also included a credit of \$33.42. The Tenants did not agree to the landlord withholding the \$175 move out charge.

Tenant's Monetary claim:

The tenants seek an order for double the security deposit.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Policy Guideline #17 includes the following:

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit<sup>12</sup>. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

The tenants paid a security deposit of \$625 prior to the start of the tenancy. I determined the tenancy ended on July 31, 2016. I further determined the tenants provided the landlord with their forwarding address in writing on July 31, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order

against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The landlords returned \$450 of the security deposit on August 12, 2016 (the \$33.32 credit was not part of the security deposit) As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$800 ( $\$625 \times 2 = \$1250 - \$450 = \$800$ ).

The tenants seek a number of claims alleging the landlord has failed to act in "good faith." In particular the tenants gave the following evidence:

- At the time the landlord gave the two month Notice to End Tenancy (May 27, 2016) the landlord failed to comply with section 49. Specifically the landlord failed to prove that "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit. "
- The proper form from the buyer requesting that Notice be given is dated August 2, 2016.
- The dates on the Contract of Purchase and Sale are not correct.
- The landlord requested access to the rental unit to have an Appraisal completed. This occurred in July.

The landlords gave the following testimony:

- The landlord produced a copy of the Contract of Purchase and Sale between the landlords and MCR which was dated May 10, 2015. I determined that was a typographical error and that it meant to say May 10, 2016. That contract included a term as follows "The sellers agree to terminate the tenancy agreement in accordance with the residential tenancy act on or before May 31, 2015 (another typographical error as it meant to say 2016). The landlord produced another document dated August 2, 2016 which is titled Buyers Notice to Seller for Vacant Possession of a Tenant Occupied Property. The closing date was July 31, 2016. There is an addendum that extended the closing date to August 2, 2016.
- The property was transferred to MCR on August 2, 2016 and she moved into the subject property.

Section 51 of the Residential Tenancy Act provides 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.

(1.1) 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.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

- (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.

Policy Guideline #2 includes the following provision:

"The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent.

Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive."

I dismissed the tenants' application for double the equivalent of one month rent under section 51(2) for the following reasons:

- I do not accept the submission of the Tenants that the landlord failed to act in "good faith." I am satisfied that the provision in the Contract for Purchase and Sale that provide "The sellers agree to terminate the tenancy agreement in accordance with the residential tenancy act on or before May 31, 2015 (another typographical error as it meant to say 2016)" is sufficient to satisfy the section.
- The landlords did not have an ulterior motive. They gave the Tenants an opportunity to purchase the rental unit. The parties were unable to agree to a price and the landlords then put the rental unit on the market. It was a seller's market at the time and the landlord's had a legal right to maximize the amount they could sell the unit for.
- The tenants failed to establish that the landlord's decision to sell was motivated by a dishonest or undisclosed purpose.
- Even if I am wrong in this analysis, I determined the only remedy available to the Tenants was to apply to have the Notice cancelled. The tenants chose not to make such an application and they received the benefit of "the equivalent of one month rent" under section 51(1).
- The rights granted under section 51(2) require (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 closing date was August 2, 2016. The purchaser moved in immediately after that. There is no evidence to indicate that the purchaser failed to comply with section 51(2). ,

I dismissed the tenants' claims of \$52.89 for the cost of renting a Uhaul and moving in fee in to the new rental apartment as the landlords had a legal right to end the tenancy in the manner that they did.

I dismissed the tenants' claim of 60 hours of 2 people for packing, cleaning and moving and unpacking as the landlords have not breached any legal right owed to the Tenants. Similarly, the landlords are not responsible for aggravated damages for stress.

I dismissed the tenants' claim of \$2820 for 12 months difference of rent between the old rental unit and the rental unit they moved. The landlord had a legal right to end the tenancy. They are not responsible for increases in the market place.

I dismissed the tenants' claim of \$546 for aggravated damages for not being able to focus on job interview preparation. The landlords are not responsible for this claim. Further, it is not foreseeable and not recoverable.

I dismissed the tenants' claim of \$320 for his wife having to reschedule her trip back to Canada as the landlords are not responsible for this.

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Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenants the sum of \$800 plus \$10 for the cost of the filing fee (reduced to reflect the proportionate limited success of the tenants for a total of \$810.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: December 08, 2016

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Residential Tenancy Branch