



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

On June 28, 2016, the Tenants submitted an Application for Dispute Resolution for the Landlord to return the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. Both parties were represented at the hearing. The hearing process was explained and the parties were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. The Parties testified that they exchanged the evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants are seeking the return of double the security deposit. The Landlord disagreed with the amount of the claim being increased without an amendment to Tenants application being filed and served on the Landlord in accordance with the Residential Tenancy Branch Rules of Procedure.

Section 38 of the Act states if a Landlord does not repay, or make an application for dispute resolution claiming against the security deposit 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 pay the Tenant double the amount of the security deposit.

The Tenant applied for the return of the security deposit, and if I find that the Landlord did not comply with the provisions of section 38 of the Act, the Act requires that the

Landlord must pay double the amount of the security deposit. For this reason, the Tenants are not required to amend the amount they are seeking in their application, in order to be granted the compensation.

With respect to the Tenants claim for compensation due to a section 49 Notice, the Tenant's counsel requested an adjournment near the end of the hearing. The Tenants counsel wanted time to prepare an argument to counter the oral submission of the Landlord's counsel that compensation should not be granted if the Notice was defective.

The request for an adjournment was denied. The Tenant applied for dispute resolution on June 28, 2016, and had six months to prepare for the hearing. The Tenant's counsel submitted a copy of a Residential Tenancy Branch decision where an Arbitrator awarded a Tenant two months' rent in compensation for a similar issue. I find that the Tenant's counsel was alive to the issue and there was sufficient time to prepare in advance of the hearing.

#### Issues to be Decided

- Are the Tenants entitled to the return of double the amount of their security deposit?
- Are the Tenants entitled to receive the amount of double the monthly rent as compensation for receiving a notice to end tenancy under section 49 of the Act?
- Are the Tenants entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties testified that the tenancy began on March 15, 2015, as a 1 year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,700.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$850.00. The tenancy ended on June 1, 2016.

The Landlord served the Tenants a 2 Month Notice To End Tenancy For Landlord Use of Property dated April 24, 2016, ("the 2 month Notice"). The Landlord did not select one of the reasons that are listed on the 2 Month Notice for ending a tenancy. Instead, the Landlord created his own reason. The Landlord wrote "*Landlord is selling house*". The 2 Month Notice states that the Tenants must move out of the rental unit on July 31, 2016.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy

Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The Tenants did not dispute the Notice. The Tenant's accepted compensation from the Landlord in the amount of \$1,700.00.

The Tenant's provided a sworn affidavit from S.A. that indicates on June 1, 2016, the Tenants met with the Landlords for an end of tenancy inspection and provided the Landlords with their forwarding address.

The Tenants counsel submitted that the Tenants entered into a discussion with the Landlords to allow the Landlord to keep \$250.00 of the security deposit for carpet cleaning and cleaning of the rental unit.

The Tenants received a letter from the Landlord dated June 9, 2016, with an enclosed cheque in the amount of \$427.50 from the security deposit. The Landlord withheld \$430.23 for carpet cleaning, repairs and cleaning. The Tenants provided a copy of the Landlord's letter.

On June 13, 2016, the Tenant's lawyer sent a letter to the Landlord stating that the Landlord must pay the Tenants the amount of double the monthly rent because the Landlord did not use the property for a purpose allowed by the Act. The letter also demands that the Landlord return the \$422.49 that the Landlord withheld from the security deposit contrary to the parties' agreement.

In response, the Landlords counsel submitted that the Tenants agreed to a deduction of \$250.00 from the security deposit for carpet cleaning and for cleaning and the Landlord deducted those costs pursuant to the agreement. The Landlords counsel submitted that the Tenants would have expected to pay more, if the actual cost was more.

The Landlord's counsel submitted that the Tenants did not dispute the 2 Month Notice. He submitted that the Tenants knew the Landlords were selling the house. The Landlord's counsel submits that a Tenants right to compensation is not triggered unless a Landlord issues a notice in the proper form under section 52 of the Act. Since the Landlord gave an incomplete notice, compensation is not triggered.

The Landlord J.W. testified that a realtor told the Landlords they could get more money for the sale of their home if the unit was not cluttered. The Landlords issued the 2 Month Notice to End the tenancy so they could clean it up and get market value. The Landlord testified that there was no sale agreement prior to issuing the 2 Month Notice.

The Landlord testified that the house went on the market on June 8, 2016, and the sale of the house closed on July 19, 2016.

The Landlord testified that the Landlords received the Tenants forwarding address at the time of the move out inspection.

### Analysis

Section 64 of the Act states that director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this part.

Section 51 (1) of the Act states that 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.

Section 51 (2) of the Act states: *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.*

Section 52 of the Act states: *In order to be effective, a notice to end tenancy must be in writing and must:*

- a) be signed by the landlord or tenant giving the notice*
- b) give the address of the rental unit*
- c) state the effective date of the notice*
- d) except for a notice under section 45(1) or (2) state the grounds for ending the tenancy, and*
- e) when given by a landlord, be in the approved form.*

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 24, 2016 is not an effective Notice. The Notice is defective because "*Landlord is selling house*" is not a reason permitted to end a tenancy under section 49 of the Act.

Both parties are expected to determine their rights and responsibilities under the Act, regulations, and tenancy agreement. Upon receiving the 2 Month Notice, the Tenants had the choice to accept the Notice, as it was given, or dispute the 2 Month Notice and have the tenancy continue. The Tenants chose to accept the Notice and they moved out.

The Tenants choice of accepting the 2 Month Notice with compensation does not make the Notice an effective Notice. I find that the Tenants accepted a defective Notice to end tenancy and moved out. I find that the tenancy ended pursuant to section 44 (1)(d) of the Act, when the Tenants vacated the rental unit and not because of the issuance of an effective Notice to end tenancy.

In the circumstances, I find that the Landlords are not obligated to compensate the Tenants in the amount of double the monthly rent.

Under section 64 of the Act I am not bound to follow other decisions. However, I distinguish my Decision from the Decision provided by the Tenant's counsel. In the Decision provided by counsel, the ground for ending the tenancy is a reason permitted under section 49 of the Act. It appears the Arbitrator considered the notice to be an effective notice.

Section 38 (1) of the Act states 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 repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states:

*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.*

I find that the Tenants provided their forwarding address to the Landlords on June 1, 2016. I find that the Landlords returned \$427.50 of the security deposit to the Tenants within 15 days of the end of the tenancy, but there was no agreement that the Landlords could keep the portion of the deposit they retained.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of \$422.50 which is the amount of the deposit that was withheld.

According to the online Residential Tenancy Branch security deposit calculator, there is no interest to be paid on the \$850.00 security deposit for the term of this tenancy.

I find that the Landlords owe the Tenants \$845.00 for the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants had some success with their application and I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

I order the Landlord to pay the Tenants the amount of \$945.00. I grant the Tenants a monetary order in the amount of \$945.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlords failed to repay the security deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the portion of the security deposit that was withheld by the Landlord.

I grant the Tenants a monetary order in the amount of \$945.00.

The Tenants request for compensation of double the amount of the monthly rent under section 51 of the Act is dismissed.

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: January 24, 2017

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Residential Tenancy Branch