



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$1100.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlords by mailing, by registered mail to where the landlords reside on December 9, 2016.

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

### Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on January 1, 2016. The rent was \$550 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$275 on January 4, 2016.

On September 23, 2016 the tenant was advised by the landlord that he would have to vacate the rental unit by October 15, 2016 because the landlord's family was moving in. The landlord subsequently agreed the tenant could stay to the end of October. The landlord gave the tenant a notice in writing dated September 20, 2016 but the notice was not in the approved government form.

The tenant vacated the rental unit on October 17, 2016.

The tenant(s) provided the landlord with his/her their forwarding address in writing on October 27, 2016. The parties have not agreed the landlord could keep the Tenant's security deposit. The landlord has not filed a claim against the Tenant and the landlord does not have a money order against the Tenant.

### 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.

### Analysis

The tenant paid a security deposit of \$275 on January 4, 2016. I determined the tenancy ended on October 17, 2016 when the tenant vacated the rental unit. I further determined the tenants provided the landlord with their forwarding address in writing on October 27, 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. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$550.

I dismissed the Tenant's claim for the equivalent of one month rent. Section 51(1) 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.

Section 49 requires the use of the required government form. I determined the Act does not entitle the tenant to recover the equivalent of one month rent where section 49 has not been followed. This may be an unfortunate result but it remains the law until amended.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$550.

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 final and binding on the parties.**

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: February 01, 2017

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Residential Tenancy Branch