



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC MNSD RR FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. They confirmed an email Notice to End Tenancy dated December 1, 2016 was sent to the tenant and the tenant moved and filed her Application on January 5, 2016. The tenant said her Application was late for the Notice to End Tenancy was not a legal notice. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To extend the time outside of the tenant dispute period for filing of their Application as they had a serious and compelling reason for filing it late;
- b) To cancel a notice to end tenancy for cause pursuant to section 47;
- c) To compensate the tenant for the landlord serving them an incorrect notice and causing them to vacate and incur damages;
- d) To recover their security deposit; and
- e) To recover the filing fee for this Application.

### **Issue(s) to be Decided:**

The tenant has moved so cancelling the Notice to End Tenancy no longer applies. Has the tenant proved on the balance of probabilities that they are entitled to compensation for losses incurred due to an incorrect Notice to End Tenancy and to recover their security deposit and filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in January 2016 but there was no signed lease, rent was \$1100 a month and a security deposit of \$1100 was paid (there were pets also). The landlord said he emailed them that the tenancy was ending on January 1, 2017 as it was a fixed term lease of one year. The tenant said it was not a fixed term, it was month to month. The tenant said due to the improper Notice, she had to find a new home. He notice said she was to get out so she did to avoid confrontation. The landlord said when he sent the email Notice, the husband of the tenant said it was no problem and he heard nothing

until the Application served on January 5, 2017. The tenant requests two months rent due to the hardship imposed by the improper Notice.

The tenant also requests the refund of her security deposit. They moved December 31, 2017 and provided their forwarding address in writing to the landlord on the date of the move-out inspection January 1, 2017. The landlord acknowledged this was correct. He said he discussed the deposit with the tenant and showed them bills related to their tenancy such as the Telus bill in his name. He did not file an Application but kept the deposit for the bills. Included with the evidence is proof of service by texting to both tenants and a Final Opportunity to do an Inspection. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, when the tenant is issued a Notice to End Tenancy to which they object, their recourse is to file an Application to Dispute with the tenancy branch and not to vacate. I find the tenants vacated without registering any objection at the time. Although the landlord contended they had a verbal fixed term tenancy agreement which ended on January 1, 2017 and the tenant contended it was a month to month, I find insufficient evidence to support either allegation. I find insufficient evidence of any damages that the tenant sustained due to the email notice. I find further that if damage was contemplated, it was up to her to mitigate the damages by filing an Application to dispute the Notice and refusing to vacate.

In respect to the tenant's claim for the refund of her security deposit, I find the *Residential Tenancy Act* provides:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if, (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(6) If a landlord does not comply with subsection (1), the landlord*

(a) may not make a claim against the security deposit or any pet damage deposit, and  
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that they paid \$1100 security deposit in 2016, gave the landlord personally their forwarding address in writing on January 1, 2017 and vacated on December 31, 2016. I find they gave no permission for the landlord to retain the deposit and they have not received the refund of their security deposit. I find the landlord agreed with these facts. The landlord stated he has not filed an Application to claim against the deposit although he had expenses associated with the tenancy. I advised him that he has the option of filing an Application to claim his losses within the legislated time frame. I find the tenant entitled to recover double their security deposit.

### **Conclusion:**

I find the tenants entitled to a monetary order as calculated below and to recover the filing fee for this application.

Security deposit	1100.00
Double the deposit (no interest 2016)	1100.00
Filing fee	100.00
<b>Total Monetary Order to Tenant</b>	<b>2300.00</b>

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