



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

One of the tenants attended the hearing, gave affirmed testimony and also represented the other tenant. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on January 19, 2017 and orally provided a tracking number. The registered mail was returned to the tenant unclaimed by the landlord last Friday. The tenant was permitted to send to me by facsimile proof of such serve after the hearing concluded. I have now received a Registered Domestic Customer Receipt bearing the tracking number that the tenant had orally provided, as well as a Canada Post cash register receipt with a date stamp bearing the date of January 19, 2017. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?
- Has the tenant 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 double the amount of the security deposit, compensation for a missing barbecue and aquarium, and double the amount of rent for the landlord's failure to comply with the *Act*?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on December 1, 2014 and ended on September 1, 2015. Rent in the amount of \$1,400.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 4 units within a complex, and the landlord does not reside there.

The tenant further testified that the landlord gave a rental increase attempting to increase rent by \$100.00 per month but the maximum amount permitted was about \$32.00. The tenant agreed to a 2.7% increase and the landlord accepted that. However, the landlord gave another increase of \$75.00 per month and posted the notice to the tenant's door. The tenant told the landlord he couldn't do that, and the landlord grabbed the notice and ripped it up. The landlord has attempted to raise the rent twice within a year and both times in excess of the amount allowed.

The landlord had served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated June 26, 2015 and contains an effective date of vacancy of August 31, 2015. The reason for issuing it states: "The rental unit will be occupied by the landlord or a close family member (parent or child, or parent or child of that individual's spouse)." The tenant did not pay rent for the last month of the tenancy.

The tenant sent to the landlord a letter by registered mail asking for the security deposit to be returned and providing an address to send it to. A copy has been provided as well as a copy of the registered letter envelope stamped by Canada Post July 27, 2016. The registered letter was returned unclaimed by the landlord.

The tenant also sent an email to the landlord, who responded, and the string has been provided for this hearing. The tenant requests return of the security deposit and return of the tenants' personal belongings on September 15, 2015. The landlord responds on September 17, 2015, saying: "Fuck off."

The tenants have not been served with an application for dispute resolution by the landlord claiming against the security deposit and have not received any portion of it from the landlord.

The landlord didn't move in for the first 2 months after the tenants moved out, and the tenants found an advertisement for the rental unit at \$1,650.00 per month available September 1, 2015. A copy has been provided.

The tenant went back to the rental unit to retrieve a barbeque and aquarium for his lizard, but both items were gone. The rental unit was vacant. A relative of the landlord told the tenant that a worker of the landlord took the barbeque, and the tenant has provided a copy of a receipt from its original purchase in the amount of \$69.99 dated May 14, 2014. The tenant seeks compensation for it as well as \$150.00 for the aquarium, saying that they cost \$100.00 or \$150.00, and it was cracked, but was used for a lizard.

The tenants seek double the amount of the security deposit and double the monthly rent, \$70.00 for the barbeque and \$150.00 for the aquarium, for a total of \$4,420.00.

### Analysis

The *Residential Tenancy Act* states that if a landlord does not use the rental unit for the purpose set out in the 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant is entitled to double the monthly rent. In this case, the tenants moved out in accordance with such a notice given by the landlord, on September 1, 2015, albeit 1 day late, and the landlord immediately put up an advertisement to rent it for \$250.00 per month more than the tenants were paying for a new tenancy showing an availability of the rental unit for September 1, 2015. I find that the tenants have established a claim for double the rent, or \$2,800.00.

I am also satisfied that the tenants have done what is reasonable by sending the landlord a request by registered mail for return of the security deposit and providing a forwarding address to return it to. I also find that the landlord has simply refused to pick up any mail from the tenants, likely in an attempt to avoid any liability. The emails exchanged make that clear wherein the landlord simply tells the tenant to fuck off.

If a landlord does not return a security deposit 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 make an application for dispute resolution claiming against the security deposit within that 15 day period, the landlord must repay the tenant double the amount. In this case, the tenant testified that he has not been served with an application for dispute resolution by the landlord, and I have no such application before me. The tenancy ended on September 1, 2015 and the landlord is deemed to have received the tenant's forwarding address by registered mail 5 days after mailing, or August 1, 2015. I find that the tenants have provided the forwarding address within a year after the end of

the tenancy. The landlord has not returned any portion of the security deposit and I find that the tenants have established a claim for double the amount, or \$1,400.00.

I also accept the undisputed testimony of the tenant that the landlord did not deal with the tenants' barbeque in accordance with the *Act*, and having received a copy of the receipt when it was purchased, I grant a monetary order in favour of the tenants for \$69.99. The tenants have not provided any evidence of the worth of the cracked aquarium and I dismiss the tenants' application for compensation for that item.

In summary, I find that the tenants have established a claim of double the monthly rent, or \$2,800.00, double the security deposit, or \$1,400.00 and \$69.99 for the cost of the barbeque, for a total of \$4,269.99.

### 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 \$4,269.99.

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: March 17, 2017

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Residential Tenancy Branch