



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on September 26, 2016 for the return of double his security deposit, and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), the regulation or tenancy agreement. The Tenant also applied to recover his filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlord during the 15 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified the Landlord was served with a copy of the Application and the Hearing Package on September 29, 2016 by registered mail. The Tenant was unable to provide the Canada Post tracking number into evidence. However, the Tenant testified that on October 5, 2016 he received an email from the Landlord who acknowledged receipt of his Application and notice of this hearing. Based on the undisputed evidence before me, I accept the Landlord was served with the required documents for this hearing pursuant to Section 89(1) (c) of the Act.

### Issue(s) to be Decided

- Is the Tenant entitled to the return of double his security deposit?
- Is the Tenant entitled to monetary compensation under the 2 Month Notice?

### Background and Evidence

The Tenant testified that this tenancy began on May 1, 2014 for a fixed term of one year which then continued on a month to month basis thereafter. Rent under the signed

tenancy agreement was \$1,650.00 payable on the first day of each month which was then increased to \$1,740.30 during the tenancy. The Tenant paid the Landlord an \$825.00 security deposit on April 17, 2014.

The tenancy was ended when the Tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") on July 22, 2016. The 2 Month Notice was provided into evidence and shows a vacancy date of September 30, 2016. The reason for ending the tenancy indicated on the 2 Month Notice was that the rental unit had been sold and the purchaser has asked the Landlord to serve the 2 Month Notice because the purchaser or a close family member wants to move into the rental unit.

The Tenant testified that pursuant to the provisions under the 2 Month Notice, he provided the Landlord with a 10 day written notice dated August 18, 2016 to vacate the rental unit on August 31, 2016 which was the date the tenancy ended.

The Tenant testified that on that 10 day notice, he also provided the Landlord with a forwarding address. The Tenant testified that he also provided that same forwarding address on the move-out condition inspection report which was completed at the end of the tenancy on August 31, 2016.

The Tenant testified that shortly after he vacated the rental unit, he saw that the Landlord had posted an advertisement on line for the re-rental of the rental unit at a high rent amount of \$2,200.00. The Tenant provided a copy of this advertisement into evidence and explained that the pictures used by the Landlord to advertise the rental unit were taken during the time he occupied the rental unit as they showed his personal items and furniture.

The Tenant testified that after he had filed his Application, he received from the Landlord the one month compensation payable to him under the 2 Month Notice. Therefore, the Tenant withdrew his claim for this amount as he claimed this when he filed the Application.

The Tenant explained that on October 5, 2016, he also received back from the Landlord \$607.12 of his security deposit minus charges for cleaning. The Tenant confirmed that he had not given any written consent to the Landlord to make these deductions. Accordingly, the Tenant now claims a total amount of \$4,523.48 from the Landlord pursuant to the reduced claim amount on his Application.

### Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

Based on the undisputed testimony and evidence of the Tenant, I find the Tenant served his forwarding address in writing to the Landlord in accordance with the Act before the tenancy ended on August 31, 2016. Therefore, the Landlord had 15 days from August 31, 2016 to repay the security deposit or make an application to claim against it.

There is no evidence before me that the Landlord made an Application within 15 days of the ending of the tenancy or obtained written consent from the Tenant to keep it or make deductions from it. Therefore, I find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment or to deductions to be made, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that a landlord feels they are entitled to keep or make deductions, based on unproven claims. A landlord may only keep the security deposit or make deductions from it through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. Based on the foregoing, I find the Tenant is now entitled to double the return of his security deposit in the amount of \$1,650.00. As the Tenant has already received from the Landlord an unauthorized balance of \$607.12, the amount awarded is reduced to \$1,042.88.

I now turn my mind to the Tenant's Application for monetary compensation as a result of the Landlord not using the property for the use indicated on the 2 Month Notice. A 2

Month Notice is intended to be given to a tenant in good faith. In this case, based on the undisputed evidence provided by the Tenant, I find the Tenant accepted the 2 Month Notice in good faith on the understanding that the rental unit had been sold and the purchaser was intending to move into the rental unit.

I accept the Tenant's evidence that he has already obtained the 1 month compensation provided for by Section 51(1) of the Act after 2 Month Notice is served. Section 51(2) of the Act states:

**51 (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.*

[Reproduced as written]

I accept the Tenant's undisputed evidence that the Landlord put the rental unit back onto the rental market and I find this is sufficient evidence to suggest that the Landlord has not used the rental unit for the use indicated on the 2 Month Notice. Therefore, pursuant to Section 51(2) of the Act, the Landlord must pay double the monthly rent payable under the tenancy agreement. Consequently, the total amount awarded to the Tenant for this portion of the claim is \$3,480.60 (\$1,740.30 x 2).

As the Tenant has been successful in this matter, pursuant to Section 72(1) of the Act, I also award the Tenant the filing fee of \$100.00 for the cost of having to make this Application. Therefore the total amount awarded to the Tenant is \$4,623.48 (\$1,042.88 + \$3,480.60 + \$100.00).

The Tenant is issued with a Monetary Order which must be served on the Landlord. The Tenant may then enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. The Landlord may also be liable for any enforcement costs

incurred by the Tenant. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord has breached the Act by not dealing properly with the Tenant's security deposit and illegally ending the tenancy. Therefore, I grant a Monetary Order in the amount of \$4,623.48 in favor of the Tenant.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 27, 2017

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Residential Tenancy Branch