



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDC MNSD OLC

### **Introduction**

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Is the tenant entitled to the return of all or a portion of his security deposit?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

This tenancy commenced in June of 2009. Monthly rent was set at \$1,465.75, payable in advance on the first of each month. The landlord held a \$700.00 security deposit, and \$164.43 was returned to the tenant after the tenancy ended on September 2, 2016. This tenancy ended pursuant to a 2 Month Notice to End Tenancy ('2 Month Notice') issued by the landlord on June 23, 2016, with an effective date of August 31, 2016, as the landlord's son wanted to occupy the suite.

The tenant testified to the following. The tenant moved out as per the 2 Month Notice issued to him by the landlord. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child, or the parent or child of the individual's spouse)". A copy was included as part of the tenant's evidence.

The tenant is seeking compensation as he believes the landlord did not issue the 2 Month Notice in good faith, and he doubts the reason the landlord provided on the 2 Month Notice. The tenant is also seeking monetary compensation and the return of his security deposit as the landlord had only returned \$164.43 to him. The tenant testified that the landlord did not file an application to keep a portion of his security deposit, nor did the tenant give the landlord permission to keep any of it.

The tenant stated that he had filed an application for dispute resolution regarding another matter relating to this tenancy, and the matter was heard on September 23, 2016, and was dismissed by the Arbitrator. The tenant testified that he had served the landlord with his application on June 3, 2016, and received the 2 Month Notice on June 23, 2016. Based on the sequence of events, the tenant believed that the landlord issued the 2 Month Notice in response to the filing of his application.

The tenant also disputes the deductions the landlord made when returning a portion of his security deposit. The tenant admits that he did stay two days past the effective date of the tenancy, but he stated that the landlord consented to it. He stated that the holes in the walls were there before he had moved in and that the carpets were from 1994 and were due to be replaced.

The landlord testified during the hearing that the move out inspection was done in the presence of the tenant, and the report was initialed by the tenant acknowledging the damages to the unit. The landlord testified that the tenant was not charged for the carpet, and that a statement was issued to the tenant along with the tenant's deposit cheque listing the following deductions: \$97.72 for the overstay, \$220.50 for cleaning, \$147.00 for 4 broken insect screens at \$35.00 each, \$10.50 for replacement of 4 light bulbs, and \$59.85 for fixing the walls. The total deductions totaled \$535.57. A copy of the statement, dated September 15, 2016, was submitted in the landlord's evidence.

The landlord testified that the tenant left considerable damage to the suite including breaking the insect screens, damaging the drywall with 38 holes, and not cleaning the fridge and stove. The landlord submitted photos in his evidence to support these claims, as well as a copy of the inspection report.

The landlord confirmed in the hearing that his son moved in on January 2017, after renovating the suite for occupancy. The landlord provided a copy of a \$200.00 cheque that was paid to the strata for the move-in, dated January 1, 2017. The landlord also provided a copy of the son's driver's license and copies of utility bills that contain the address of the suite and son's name.

### **Analysis**

Section 51(2) of the *Act* reads in part as follows:

**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.*

I find that the landlord provided sufficient evidence to support his claim that the suite was indeed occupied by his son by January 2017, within four months of the effective date on the 2 Month Notice. The only testimony provided by the tenant was that he believed the motive of the landlord was to retaliate for the filing of tenant's application. The question of the landlord's good faith is not applicable in this situation as the tenant did not make an application to dispute the 2 Month Notice. The applicable section in the *Act* that would apply to this situation would be whether the landlord complied with section 51(2) of the *Act*. In this case, the landlord's son had only recently moved into the suite in January 2017, and I find it premature to make a finding that the landlord did not comply as six months has not passed. Accordingly, I am dismissing the tenant's application for monetary compensation in relation to the 2 Month Notice with leave to re-apply.

The tenant also requested the return of his security deposit, and compensation for the landlord's failure to comply with section 38 of the *Act*. Section 38(1) of the *Act* requires a landlord, within 15 days 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 for Dispute Resolution seeking an Order allowing the landlord 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of the end of this tenancy. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained his written authorization at the end of the tenancy to retain any portion of his security deposit. I note there is no written authorization provided in evidence for the landlord to retain any of the tenant's security deposit. Although I do note that the tenant did not dispute the fact that he had not moved out on the effective date of the 2 Month Notice, the tenant testified that he had stayed with the owner's consent. The landlord did not file an application for the unpaid rent, nor were any warnings or notices issued to the tenant for failing to vacate the suite on August 31, 2016, or for unpaid rent. Whether or not the tenant remained in the rental unit with the landlord's consent, there is undisputed sworn testimony, supported by written evidence, that the tenant did overhold in the rental unit beyond the date when he was expected to leave. For this reason and in accordance with section 57 and paragraph 72(2)(a) of the *Act*, I find that \$97.72 in overholding rent is to be deducted from the tenant's monetary award.

In accordance with section 38 of the *Act*, I find that the tenant is entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period. As the tenant has been successful in his application, I find that the tenant is entitled to recover their filing fee from the landlord.

### **Conclusion**

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. A deduction will be made from this Monetary Order for the tenant's failure to comply with section 57 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Return of the Security Deposit retained by landlord (\$700.00 - \$164.43 = \$535.57)	\$535.57
Monetary Award for Landlords' Failure to	700.00

Comply with s. 38 of the <i>Act</i>	
Less Overholding Rent Owed to the Landlord (\$1,465.75/30 days = \$48.86 per day x 2 days)	-97.72
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,237.85</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application to obtain a monetary award pursuant to section 51(2) of the Act regarding the landlord's alleged failure to use the premises for the purpose stated in the 2 Month Notice is dismissed with leave to re-apply.

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: April 25, 2017

---

Residential Tenancy Branch