



# 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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; a monetary award in an amount equal to the security deposit as a result of the landlord's failure to return the deposit in accordance with the Act also pursuant to section 38; a monetary award in amount equal to two months' rent as the landlord failed to use the rental unit as described in his 2 Month Notice to End Tenancy pursuant to section 51(2); and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and evidence for the application. The landlord testified that he did not make his own application.

### Issue(s) to be Decided

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

Is the tenant entitled to a monetary award in an amount equal to the security deposit for the landlord's failure to return the deposit?

Is the tenant entitled to a monetary award in an amount equal to two months' rent as a result of the landlord's failure to use the unit as described in his 2 Month Notice?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This month to month tenancy began in January 2009 with a monthly rental amount of \$700.00. The landlord continues to hold the tenant's \$350.00 security deposit as of the

date of this hearing. The tenant vacated the rental unit on January 22, 2017 after the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use.

The tenant testified that he resided in the rental unit for approximately 8 years. He testified that the current landlord took over possession of the residential premises in December 2016. The tenant testified that he and the landlord disagreed about the rental amount the tenant should be required to pay and he decided to end his tenancy prior to the effective date of the landlord's 2 Month Notice. He submitted a copy of the typewritten note provided to the landlord. It included his 10 day notice in accordance with the requirements of the Act as well as his forwarding address. The note was dated January 12, 2017. The landlord acknowledged receipt of the tenant's forwarding address and notice on that date. The landlord confirmed that the tenant vacated the rental unit on January 22, 2017.

The tenant provided undisputed testimony that a walk through inspection was done at the end of the tenancy but that no condition inspection report was created. The tenant testified that the landlord told the tenant there were no issues with the state of the rental unit. The tenant testified that, after the date of the inspection, the tenant received compensation from the landlord in accordance with the section of the Act related to end the tenancy with a 2 Month Notice. At this hearing, the tenant and landlord agreed that the tenant received the appropriate amount of compensation at the end of the tenancy.

The tenant submitted photographic evidence of the state of the rental unit at the end of tenancy. The photographs showed an empty, clean and tidy rental unit. The landlord argued that the tenant's photographs intentionally did not show the damage in the rental unit. The landlord testified that the following items required attention at the end of the tenancy;

- shower filter required replacement;
- carpet and flooring in the rental unit were badly damaged and dirty;
- ceiling was cracked;
- rental unit required lots of paint;
- toilet was leaking.

The landlord testified that he has had the toilet repaired but did not complete any of the other repairs to the rental unit. The landlord testified that his intention was to have his brother reside in the rental unit. The landlord testified that he planned renovations to the rental unit to commence after the tenant vacated the rental unit. He testified that the renovations would take place in the upper unit but that his family would reside in the rental unit. He later testified that he did not ultimately move in to the lower, rental unit

but that while the unit was empty, his brother used his phone number and information to place an internet advertisement to rent the unit temporarily. He testified this was done prior to his brother moving into the unit in early February 2017. He testified that his brother is now residing in the rental unit.

The tenant submitted online advertisements for the rental unit including advertisements posted on February 2, 2017 and February 28, 2017. The first advertisement (February 2) indicated the rental unit (a 2 bedroom basement suite in a quiet neighbourhood) available for rent at \$1050.00 per month. The photographs attached to the advertisement show the tenant's former rental unit and provide the landlord's telephone number for contact. The landlord did not dispute that these advertisements were issued with respect to his rental unit however he provided an explanation. I note that the second advertisement (February 28) indicated a reduced monthly amount of \$990.00 per month for the rental unit.

The tenant submitted text messages between the parties. A message dated February 28, 2017 written by the landlord indicated that the tenant's security deposit will not be returned because of the condition the rental unit was left in. The landlord testified that he is a new landlord and was not familiar with his obligations as a landlord including; creation of a condition inspection report and an application to retain the tenant's security deposit. The tenant submitted a realty website page listing the landlord as a realtor.

### Analysis

In his application, the tenant sought the return of his security deposit as well as an amount equivalent to the deposit as the landlord failed to return his security deposit. 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 security deposit in full 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 tenant's provision of the forwarding address. In this case, both parties agreed that the landlord was informed of the forwarding address in writing with the tenant's notice to end tenancy on January 12, 2017 and the tenant vacated the

rental unit on January 22, 2017. The landlord had 15 days after January 22, 2017 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if “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.” The tenant testified that neither he nor his co-tenant agreed to allow the landlord to retain any portion of the security deposit. As there is no evidence before me that either tenant gave the landlord written authorization at the end of this tenancy to retain any portion of the security deposit, section 38(4)(a) of the *Act* does not apply to the tenant’s security deposit.

The tenant seeks return of his security deposit. The landlord testified at this hearing that he did not apply to the Residential Tenancy Branch to retain the tenant’s deposit. The landlord testified that he was not aware that he was required to do so. The landlord is required to be familiar with his obligations under the *Act*. Given the uncontested evidence before me with respect to the tenant’s security deposit, I find that the tenant is entitled to a monetary order including the original, full amount of the security deposit (\$350.00).

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch’s Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant’s written agreement to deduct from the security deposit for damage to the rental unit after the landlord’s right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the uncontested evidence of the tenant before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant’s security deposit in full within the required 15 days. The tenant gave sworn testimony that he and his co-tenant

have not waived their right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, **I find that the tenant is therefore entitled to a total monetary order amounting to double the value of the security deposit (total: \$700.00)** with any interest calculated on the original amount only. *No interest is payable for this period.*

With respect to the tenant's claim that the landlord did not use the rental unit in accordance with the details of his 2 Month Notice, pursuant to section 49(3), a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The tenant complied with the end to tenancy, issued his own 10 day notice and vacated the rental unit on January 22, 2017.

Section 51 of the *Act* provides further requirements of a landlord with respect to the issuance of a 2 Month Notice to End Tenancy:

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.

The tenant relies on section 51(2) submitting that the landlord neither took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice (February 28, 2017) nor used the rental unit for the purpose stated for at least 6 months beginning within a reasonable period after the effective date of the notice.

As of the date of this hearing, I find that a reasonable period after the effective date of the 2 Month Notice has not yet. I note that the landlord provided unclear reasons why he deviated from the conditions of the 2 Month Notice to end tenancy. As of the date of this decision, I find the tenant's application with respect to the 2 Month Notice is premature. Therefore, I dismiss the tenant's application with respect to the 2 Month Notice with leave to reapply.

As the tenant was partially successful in his application, the tenant is entitled to recover his filing fee.

The tenant is entitled to a total monetary order of \$800.00 for the recovery of his \$100.00 filing fee, his \$350.00 security deposit and an amount equal to his deposit for the landlord's failure to return the deposit in accordance with the Act.

### Conclusion

I dismiss the tenant's application with respect to the 2 Month Notice provisions with leave to reapply.

The tenant is granted a monetary order totaling \$800.00.

The tenant is provided with this Order in the above terms and the landlord must be served with 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.

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: May 5, 2017

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Residential Tenancy Branch