



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNL, FF, MNDC, MNSD, OLC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use, monetary compensation from the Landlord, including return of the security deposit paid and recovery of the filing fee.

The hearing was conducted by teleconference on May 12, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

At the outset of the hearing the Tenant confirmed that he did not seek an Order cancelling a 2 Month Notice to End Tenancy for Landlord's use, but rather he sought compensation pursuant to section 51(2) of the *Act*.

The parties confirmed that the Landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use in the approved form. Accordingly, the Landlord did not issue a Notice pursuant to section 49 and as such, the Tenant was not entitled to compensation pursuant to section 51 of the *Act*.

As such, the only issues left to be decided were the Tenant's request for return of his security deposit and recovery of the filing fee.

### Issues to be Decided

1. Is the Tenant entitled to return of his security deposit?
2. Should the Tenant recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided that this one year fixed term tenancy began September 1, 2016. Monthly rent was payable in the amount of \$1,600.00 and the Tenant paid a security deposit in the amount of \$800.00.

The Tenant stated that the Landlord failed to do a move in condition inspection report.

The Tenant moved out of the rental unit on September 30, 2016.

The Tenant confirmed that the Landlord also failed to perform a move out condition inspection report.

The Tenant testified that he sent the Landlord his forwarding address by text message. The Tenant stated that the Landlord confirmed receipt of the address because he sent a response, and followed up this response by sending an e-transfer of \$524.00 retaining \$276.00. The Tenant stated that the Landlord informed him that he was retaining \$276.00 as he had to do some painting.

The Landlord also testified.

The Landlord confirmed that he received the Tenant's forwarding address. He also stated that he returned a portion of the security deposit, but was unable to recall what amount. He agreed it was somewhere between \$500.00 to \$524.00 and stated that he was content to agree with the Tenant's evidence that it was \$524.00.

The Landlord further confirmed that the Tenant did not agree to him retaining any portion of the security deposit. The Landlord stated that the Tenant did not clean the rental unit and left garbage in the rental unit and he felt entitled to retain these funds.

The Landlord further confirmed that he did not perform a move in or move out condition inspection report in accordance with the *Residential Tenancy Act*, and the *Regulations*.

### Analysis

Section 38 of the *Residential Tenancy Act* deals with the return of deposits and provides as follows:

### **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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant undisputed evidence that he did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenant's forwarding address and failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished his right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant or an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing him to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

*Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* provides guidance in situations where a Landlord has retained a portion of the deposit; the example which is relevant to the case before me reads as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

Applying the above to the case before me, I Order pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of \$ calculated as follows:

\$800.00 security deposit x 2 = \$1,600.00

Less

\$524.00 returned to Tenant = \$1,076.00.

I find the Tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The Tenant's claim for compensation pursuant to section 51(2) is dismissed as the Landlord did not serve a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49.

The Tenant is entitled to return of double the security deposit pursuant to section 38 as well as recovery of his filing fee. As the Landlord returned the agreed upon sum of \$524.00, the Tenant is entitled to compensation in the amount of \$1,176.00.

The Tenant is granted a formal Monetary Order in the amount of **\$1,176.00** and must serve a copy of the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the 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 12, 2017

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Residential Tenancy Branch