



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD, OLC

### Introduction

This hearing convened as a result of a tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord pursuant to sections 38 and 51 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on May 16, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present is evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that on November 16, 2016 he personally served the Landlord with the Notice of Hearing and the Application at his residential address as noted on the Application for Dispute Resolution.

Based on the Tenant's undisputed testimony, I find the Landlord was served with Notice of the Hearing and I proceeded with the hearing in his absence.

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 Tenant's 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.

### Issues to be Decided

1. Is the Tenant entitled to return of his security deposit?
2. Is the Tenant entitled to compensation pursuant to section 51 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant testified that he moved into the rental unit on July 2, 2015. He paid rent in the amount of \$750.00 and a security deposit of \$375.00.

The Tenant received a 2 Month Notice to End Tenancy for Landlord's Use on August 30, 2016.

The Tenant testified that he moved out of the rental unit on September 30, 2016 after providing the Landlord 10 days' notice as required by section 50 of the *Residential Tenancy Act*. The Tenant confirmed the Landlord did not pay him the equivalent of one month's rent as required.

The Tenant stated he did not provide the Landlord with his forwarding address in writing as he did not have a fixed address at the time.

### Analysis

The Tenant received a 2 Month Notice for Landlord's Use pursuant to section 49 of the *Act*. In the within application he applied for compensation pursuant to section 51 which reads as follows:

#### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I accept the Tenant's undisputed testimony that he did not receive the month's rent as required by the above.

The Tenant correctly notes that by giving 10 days' notice to end the tenancy early (pursuant to section 50) he is still entitled to the compensation set out in section 51(1). For greater clarity I reproduce the relevant sections as follows:

#### **Tenant may end tenancy early following notice under certain sections**

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

I therefore award the Tenant the sum of **\$750.00**.

The Tenant also applied for return of his security deposit. This is dealt with by section 38 of the *Act* which reads as follows:

Section 38 of the *Residential Tenancy Act* 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.

Pursuant to section 38(1) of the *Act*, the Landlord's obligation to return the security deposit, or make an application for its retention, does not materialize until a Tenant provides their forwarding address in writing. In the case before me the Tenant conceded he had not provided his forwarding address to the Landlord. Accordingly, his application for return of his deposit was premature. I therefore dismiss this claim with leave to reapply.

### Conclusion

The Tenant is granted a Monetary Order in the amount of **\$750.00** as compensation pursuant to sections 49 and 51 of the *Residential Tenancy Act*. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

The Tenant's claim for return of his security deposit is dismissed with leave to reapply as he failed to provide the Landlord his forwarding address in writing. The Tenant is at liberty to apply for this relief in the event he provides the Landlord his forwarding address in writing and the Landlord fails to return the funds or fails to make an application for dispute resolution within 15 days of delivery of the forwarding address as required by section 38(1) of the *Act*.

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 16, 2017

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Residential Tenancy Branch