



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38.

The landlord and "tenant AM" did not attend this hearing, which lasted approximately 21 minutes. Tenant DM ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had authority to speak on behalf of tenant AM, who is his wife, as an agent at this hearing.

The tenant testified that the landlord was served with the tenants' application for dispute resolution hearing package on November 23, 2016, by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. The tenant said that the application was mailed to the landlord's business address, which was provided by the landlord to the tenants in order for them to pay rent during their tenancy. The tenant confirmed that the Canada Post tracking number indicated that the landlord signed for the package on November 24, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on November 28, 2016, five days after its registered mailing, at an address provided by the landlord to the tenants as a service address where the landlord carried on business.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the tenant's first name to include his legal name rather than his nickname. The tenant consented to this amendment and I find no prejudice to the landlord in making it.

### Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

### Background and Evidence

The tenant testified regarding the following facts. This tenancy began on March 15, 2009 and ended on March 31, 2016. Monthly rent in the amount of \$1,175.00 was payable on the first day of each month. The tenants provided a bank statement showing that a cheque withdrawal of \$1,175.00 was made from their account on February 29, 2016, for rent. A security deposit of \$537.50 was paid by the tenants and the landlord continues to retain this deposit. The tenants provided a bank statement showing that a cheque withdrawal of \$1,100.00 was made from their joint account on March 13, 2009. The tenant said that this included a payment of \$537.50 for the security deposit and the other amount was partial rent for March 2009, because the tenants moved into the unit in the middle of the month. A written tenancy agreement was signed by both parties but no copy was provided for this hearing. The rental unit is the main floor of a house with a basement.

The tenant testified that no move-in or move-out condition inspection reports were completed for this tenancy. The tenant said that a written forwarding address was provided by the tenants to the landlord by way of a letter, dated May 19, 2016. The tenants provided a copy of this letter and the tenant claimed that it was sent by way of registered mail on May 20, 2016. The tenants provided a Canada Post receipt and tracking number with their application. The tenant confirmed that the Canada Post tracking number indicated that the landlord signed for the package on May 24, 2016. The tenant explained that the landlord did not have written permission to keep any amount from the tenants' security deposit. The tenant confirmed that the tenants did not receive an application for dispute resolution from the landlord to retain any amount from the security deposit.

The tenants seek a return of double the amount of their security deposit, totalling \$1,075.00, because the landlord did not return their deposit or file an application to keep it.

The tenants also seek compensation under section 51(2) of the *Act* for double the monthly rent of \$1,175.00, totalling \$2,350.00. The tenant said that the landlord asked the tenants to move from the rental unit. He explained that the tenants did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") from the landlord in the approved form, which is a specific Residential Tenancy Branch form. He said that he received a letter, dated December 1, 2015, from the landlord, asking the tenants to vacate the rental unit by April 1, 2016, so that the landlord's family could move in. The tenants provided a copy of this letter. The tenant said that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, the tenants are entitled to compensation. The tenant said that one of his co-workers is currently renting the rental unit and he has a friend who lives in the basement of the same house. He said that both people confirmed that the landlord did not move in with his family, but rather re-rented the unit to someone else.

### Analysis

#### Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant. The tenancy ended on March 31, 2016. The tenants provided a written forwarding address to the landlord by way of a letter sent by registered mail on May 20, 2016. I find that, as per sections 88 and 90 of the *Act*, the landlord was deemed served with this letter on May 25, 2016, five days after its registered mailing. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against the deposit.

The landlord continues to hold the tenants' security deposit of \$537.50. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit, totalling \$1,075.00, from the landlord.

Section 51 Compensation

Sections 49, 51 and 52 of the Act, state in part (my emphasis added):

- 49     (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*
- (a) *not earlier than 2 months after the date the tenant receives the notice,*
- ...
- (7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].**
- 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.*
- (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.*
- 52     **In order to be effective, a notice to end a tenancy must be in writing and must**
- (e) when given by a landlord, be in the approved form.**

Since the tenants did not receive a 2 Month Notice in the RTB approved form, as required by sections 49 and 52 of the Act, I find that the tenants are not entitled to any monetary compensation under section 51 of the Act. The tenants only received a letter

from the landlord asking them to move in three months and they chose to move out pursuant to the letter. Accordingly, the tenants' application for \$2,350.00 for double the monthly rent compensation under section 51 of the *Act*, is dismissed without leave to reapply.

### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,075.00 against the landlord. The tenant(s) are provided with a monetary 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.

The tenants' application for \$2,350.00 for double the monthly rent compensation under section 51 of the *Act*, is dismissed without leave to reapply.

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 19, 2017

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Residential Tenancy Branch