



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit.

The tenants and the landlord attended the hearing, and one of the tenants and the landlord gave affirmed testimony. The parties were given the opportunity to question each other and make closing submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

The “Details of Dispute” portion of the Tenant’s Application for Dispute Resolution sets out a monetary claim for return of the security deposit as well as a claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. Considering the evidentiary material provided by the tenants and the details contained in the application, I find that the landlord is aware of the nature of the tenants’ claim, and I amend the application to include that claim even though the box beside that claim is not checked off.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit or pet damage deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlord’s failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord’s Use of Property?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on May 1, 2013 and expired on April 30, 2014 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,200.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of

\$900.00. A copy of the tenancy agreement has been provided for this hearing and it states that the security deposit includes a pet damage deposit.

On August 1, 2016 the landlord and her mother met the tenant and the landlord had 2 forms. One was a Mutual Agreement to End Tenancy effective August 31, 2016 and the other was a Mutual Agreement to End Tenancy with no effective date. The tenant called her husband who did not agree to end the tenancy and neither form was signed.

On August 10, 2016 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated August 10, 2016 and contains an effective date of vacancy of October 31, 2016. The reason for issuing it states: "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 that individual's spouse)." It was a trying time for the tenants with serious health issues, however the tenants moved out of the rental unit on October 31, 2016 in accordance with the notice.

The landlord had previously sent a text message to the tenants wanting to increase rent by \$80.00 per month, but the tenants didn't agree or pay the increase.

On October 31, 2016 the tenants gave the landlord a document containing their forwarding address and have provided a copy for this hearing. It is dated October 31, 2016 and contains a signature of the landlord, entitled "Move Out Verification." On November 14, 2016 the landlord sent to the tenants a cheque for \$600.00 by registered mail which was received on November 16, 2016, but not the full amount of the \$900.00 security deposit. The cheque was accompanied by a note to the tenants from the landlord explaining deductions of \$200.00 for a strata move-out fee and \$100.00 for the hood fan. No move-in or move-out condition inspection reports were completed, and the tenants did not agree to any deductions from the deposit. The tenants have not been served with an application for dispute resolution by the landlord claiming against the deposit.

The tenants disbelieved the landlord's intent to use the rental unit for the purpose contained in the notice ending the tenancy and found an advertisement on Craigslist advertising the same rental unit for \$1,580.00 per month. Copies have been provided for this hearing. Also, there was an Open House at the rental unit on November 19 and 20, 2016, and the condominium rental unit was sold in December, 2016.

**The landlord** testified that she fully intended to live in the rental unit, and moved some items in on October 31, 2016. However, the very next day the landlord was in a very serious car accident with her mother and was unable to complete the move. The landlord was told by her physician that she could not live alone and had to live with her parents or have a nurse. The landlord was desperate and didn't know what to do, and asked her brother to put an

advertisement on Craigslist to re-rent. The brother told the landlord it was worth more than \$1,200.00 and listed it for \$1,580.00 per month. The landlord believes it was posted in November, 2016.

The landlord further testified that she didn't know what to do and out of desperation, sold the rental unit. Although the landlord stayed with her parents, she occupied the rental unit until it sold on February 1, 2017.

The landlord had also told the tenants that prior to moving out they had to complete a Form K for the strata. The tenants didn't do so and the landlord was fined \$200.00. Documentation to that affect has been provided for this hearing. Also, the hood fan in the rental unit was missing entirely after the tenants vacated, so the landlord deducted \$100.00 for that loss.

### Analysis

I accept that both parties have suffered serious health issues which made the situation difficult. However, I must impose the law, which requires a landlord to return a security deposit and pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. The landlord has the option of making an application for dispute resolution claiming against the deposit, but must do so within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the parties agree that the tenancy ended on October 31, 2016 and the tenants have provided evidence of the landlord receiving the tenants' forwarding address that date. The landlord returned a portion of it on November 14, 2016 by registered mail which was received by the tenants on November 16, 2016.

In determining the amount to be doubled, I refer to Residential Tenancy Policy Guideline # 17 - Security Deposit and Set-Off, which states, in part:

3. "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)."

Therefore, I order that the landlord repay the tenants double the amount of the security deposit (\$1,800.00) less the amount repaid (\$600.00), and I grant a monetary order in favour of the tenants for the difference in the amount of \$1,200.00.

The *Residential Tenancy Act* also states that if a landlord serves a tenant with a notice to end the tenancy for landlord's use of the property and doesn't use the property for at least 6 months commencing within a reasonable time after the tenancy ends, the landlord must pay double the amount of the monthly rent to the tenant as compensation.

In this case, the landlord testified that she occupied it but could not live in it until February 1, 2017 when it sold. That is only 3 months, and there is no provision in the legislation to grant any leniency with respect to the compensation. Therefore, I find that the tenants have established a claim of \$2,400.00.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,600.00.

This order is final and binding and may be enforced.

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: June 01, 2017

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Residential Tenancy Branch