



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDC, FF

### Introduction

This is an application brought by the tenant requesting a monetary order for \$6220.00.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondents and if so in what amount.

### Background and Evidence

The tenant paid a security deposit of \$575.00 on August 6, 2013 and the tenancy began on September 1, 2013.

The tenant vacated in August of 2016 and, at that time, the monthly rent was \$1200.00.

The tenant testified that, at the end of the tenancy the landlord did not return his full deposit, and he believes she did not return the deposit within the required timeframe, and therefore, since he does not recall giving her written permission to keep any of the security deposit, he is requesting an order for double his security deposit.

The tenant further testified that on June 28, 2016, the landlord slid a two month Notice to End Tenancy under his door, which he found on June 29, 2016 however, since it was slid under his door it should not be considered served until three days later, and therefore he should not have had to vacate until the end of September 2016, instead of August 2016, and therefore he believes the landlord should pay him the equivalent of one month's rent for having to move early.

The tenant testified that after receiving the two month Notice to End Tenancy from the landlord that stated that the tenancy was going to end on August 31, 2016, he sent the landlord a text giving his ten-day notice to move out of the rental unit earlier; however, the landlord refused to accept his early move, and therefore he is requesting a refund of \$1000.00. The text was sent on July 22, 2016 for a moveout date of August 2, 2016.

The tenant further testified that he paid a total of \$110.00 for parking fob and parking pass, and the landlord did not return that money at the end of the tenancy. He is therefore requesting an order for the return of that \$110.00

The tenant further testified that when he signed a new tenancy agreement starting September 1, 2015 through to August 31, 2016 the landlord set the rent at \$1150.00 for the first three months and then raised it to \$1200.00 for the remaining months and he believes this is an illegal rent increase as it did not fall within the 2.5% allowable amount, and he is therefore requesting an order for the landlord to return \$170.00.

The tenant also testified that, at the beginning of the tenancy the landlord had promised to have the carpets cleaned, however this was never done, for the full term of the tenancy, and therefore he paid \$90.00 to have the carpets cleaned.

The tenant also testified that, the two month Notice to End Tenancy, that was given to him, stated that the landlord's daughter was going to move into the rental unit, however he suspects that the landlord's daughter never did move into the rental unit, and therefore he believes that he should get the equivalent of two months' rent as required under the Residential Tenancy Act.

The applicant is therefore requesting a monetary order as follows:

Double security deposit	\$1150.00
The equivalent of one months rent for the late notice to end tenancy	\$1200.00
Rebate of rent for failing to accept ten-day notice	\$1000.00

Return of fees paid for parking fob and parking pass	\$110.00
Illegal rent increase	\$170.00
Carpet cleaning	\$90.00
Penalty for failure to comply with the reasons given for Notice to End Tenancy	\$2400.00
Filing fee	\$100.00
Total	\$6220.00

In response to the tenant's testimony the landlord testified that the tenant agreed in writing, on the moveout inspection report to allow the landlord to keep \$100.00 of the security deposit, and the remainder of that deposit was returned to the tenant 14 days after receiving the tenants e-mail with a forwarding address.

The landlord further testified that, the two month Notice to End Tenancy was slipped under the tenant's door, however the following day, June 29, 2016; the tenant admitted to her that he had received the notice, and therefore it should have taken effect on that date.

The landlord testified that the tenant did pay for a fob and parking pass, however the fob did not work when it was returned.

The landlord testified that the tenant was in the rental unit for 45 months and only got a rent increase of \$50.00 for the last nine months of that tenancy, and therefore she does not believe the amount was unreasonable.

The landlord testified that there had been an agreement to pay the tenant for carpet cleaning, however the tenant never provided her with a receipt for that carpet cleaning, and therefore she did not believe she should have to pay the tenant without a copy of a receipt.

The landlord further testified that, her daughter did move into the rental unit shortly after the tenant vacated it and, as you can see by the utility bills she has supplied, her daughter's name is clearly on the utilities for that address.

The landlord therefore believes this full claim should be dismissed.

In response to the landlord's testimony the tenant testified that he does not have a receipt for the carpet cleaning because he paid for the carpet cleaning in cash and no receipt was given.

The tenant further testified that he does not believe the Notice to End Tenancy should take effect on June 29, 2016, because the notice slid under the door is not considered served for three days.

### Analysis

I will not allow the tenants claim for double the security deposit because the landlord got the tenants written permission to retain \$100.00 of the security deposit, and the remainder of that deposit was returned to the tenant within the 15 day time frame required. Further, the landlord technically was never served with a forwarding address in writing, as text messaging is not a recognized method for service of documents.

I also deny the tenants request for \$1200.00 that he is claiming because the landlord slipped the Notice to End Tenancy under his door on June 28, 2016. The tenant admits that he found that notice on June 29, 2016, and therefore it is my finding that the document is deemed served on that date. Further, even if the Notice to End Tenancy was served late, the tenant would not be entitled to \$1200.00 because he could have stayed an extra month. The tenant would still have to show that he had suffered some kind of the loss.

I will not allow the tenants request for \$1000.00 for the landlord's failure to accept his ten-day notice to vacate the rental unit earlier than the date given on his Notice to End Tenancy, because the tenant was in a fixed term tenancy agreement and therefore is still required to pay rent to the end of that fixed term.

I will allow the tenants request for recovery of the \$110.00 paid for the parking pass and fob because, even though the receipts issued by the landlord state these are nonrefundable, it is my decision that the fees are refundable pursuant to section 6 of the residential tenancy regulations that state:

- 6** (1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is
- (a) **refundable** upon return of the key or access device, and **(my emphasis)**
  - (b) no greater than the direct cost of replacing the key or access device.

The landlord testified that the money was not refunded because the key fob did not work, however the tenant already agreed to a \$100.00 deduction from his security deposit to cover this, and therefore these fees must be returned.

It is also my decision that the landlord has given the tenant an illegal rent increase, as there is no evidence to show that the landlord has ever served the tenant with the required three-month notice of rent increase in the proper form.

Sections 42(2) & 42(3) of the Residential Tenancy Act states:

42(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

Therefore the \$50.00 rent increase that started on December of 2015 was not legal and the landlord must therefore return the full amount paid for the remainder of the term which totals \$400.00 as a term continued for nine months however the tenant did not have to pay the last month rent, as he was served with a two month Notice to End Tenancy.

I will not allow the tenants claim for carpet cleaning because the tenant has provided no evidence of having paid \$90.00 for carpet cleaning.

I also deny the tenants claim for the equivalent of two months rent as it is my finding that the landlord has shown that her daughter did move into the rental unit and therefore the landlord did comply with the reasons given on the two month Notice to End Tenancy, and the landlord is therefore not required to pay any further compensation.

Therefore the total amount of the claim that I have allowed is as follows:

return of money paid for fob and parking pass	\$110.00
Illegal rent increase \$50.00 times eight months	\$400.00
Total	\$510.00

I will not allow the tenants request for recovery of the filing fee as I have only allowed a very small portion of the tenants claim.

Conclusion

Pursuant to section 62 of the Residential Tenancy Act I have allowed \$510.00 of the applicants claim and the remainder is dismissed without leave to reapply.

I have issued a monetary order pursuant to section 67 of the Residential Tenancy Act for the respondent to pay \$510.00 to the applicant. The order has only been issued against the respondent who's initials are W.L.B. as there is no evidence to show that the respondent who's initials are L.B. was a landlord of this rental unit.

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 14, 2017

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Residential Tenancy Branch