



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      FF MNSD MNDC

### Introduction

This review hearing was convened in response to a review consideration decision granted pursuant to section 79 of the *Act*.

During the April 24, 2017 hearing it was determined that a technical issue had prevented the parties from attending the hearing. The arbitrator presiding over the April 24, 2017 hearing determined that neither party had attended the hearing. The tenant submitted a successful Application for Review Consideration demonstrating that she was unable to attend the hearing for unexpected reasons that were beyond her control, in this case a technical issue that prevented either party from calling in to the hearing.

The tenant has applied pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38 of the *Act*;
- for a monetary order pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both the landlord and the tenant appeared at the review hearing. The landlord was represented at the hearing by her agent, H.P. (the “landlord”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receiving the tenant’s application for dispute resolution, the tenant’s evidentiary package and the tenant’s notice of a review hearing. Copies of the Canada Post Registered Mail receipts were provided to the hearing. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served with the documents and the tenant’s application.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Can the tenant recover the filing fees associated with this application?

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant testified that this tenancy began on August 1, 2011 and ended on September 30, 2016. At the outset of the tenancy, rent was \$940.00 per month, rising over the course of the tenancy to \$1,000.00. A security deposit of \$470.00 continues to be held by the landlord. The tenant stated that the landlord explained to her that family members would be moving in to the suite on October 3, 2016 and she could therefore move her goods out of the unit between September 30, 2016 and October 3, 2016. The tenant stated that the final date of occupation was October 2, 2016 when she cleaned the basement suite and provided the landlord with her forwarding address. The landlord acknowledged receiving the tenant's address on this date.

The tenant explained that no condition inspection reports were performed at the start or at the conclusion of the tenancy. The landlord acknowledged retaining the tenant's security deposit, arguing that there was damage to the walls which required the suite to be re-painted. It is for this reason that the landlord stated she held on to the tenant's security deposit.

The tenant is seeking a Monetary Order of \$2,940.00 as well as a return of the filing fee. This amount represents:

<b>Item</b>	<b><u>Amount</u></b>
Return of Security Deposit (2 x 470.00)	\$940.00
Penalty for 2 month notice (2 x 1,000.00)	2,000.00
<b>Total =</b>	<b>\$2,940.00</b>

During the course of the hearing the tenant described being served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on August 1, 2016. The reason indicated by the landlord on this 2 Month Notice was cited as being, "the rental unit will be occupied by the landlord or the landlord's close family member." The tenant explained that she received the final month of her occupation in the unit for free, as

stipulated per section 51 of the *Act*. On October 27, 2016 the tenant saw an advertisement on a website with her exact suite being advertised for rent on October 15, 2016. A copy of the advertisement was provided to the hearing as part of the tenant's evidentiary package. This print out contains the exact address of the unit being advertised. This address matches that of the property in dispute. The landlord largely agreed with these facts, but noted that a change in circumstance with the landlord's family prevented a family member from moving in to the unit.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's 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 tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on October 2, 2017, or following the conclusion of the tenancy. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit. It is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss.

While the landlord acknowledged that she kept the \$470.00 security deposit because of damage to the paint, no evidence was produced at the hearing that the landlord received the tenant's written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$940.00, representing a doubling of the tenant's security deposit

that has not been returned.

The tenant has also applied for a monetary award of \$2,000.00. She is seeking this amount in satisfaction for vacating a rental unit after having been issued a 2 Month Notice to End Tenancy based on the landlord's use of property.

Section 51(1) of the *Act* states, "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." Testimony was provided to the hearing that the landlord fulfilled this requirement of the *Act* and provided the tenant with free rent for September.

The second portion of section 51 of the *Act* states, "In addition to the amount payable under subsection (1) [above], if 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 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, 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."

I am satisfied based on the evidence before me and the testimony provided by the tenant that the landlord did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. The tenant submitted undisputed written evidence in the form of an online advertisement showing her exact rental unit for rent almost immediately following the date she vacated the unit. The suite listed in the advertisement is a basement suite at the address provided to the hearing, creating a perfect match. The landlord provided no submissions disputing this advertisement.

As the tenant was successful in her application, she may recover the filing fees associated with both the original application and the review consideration decision.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$3,090.00 against the landlord. The tenant is 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.

<b>Item</b>	<b><u>Amount</u></b>
Return of Security Deposit (2 x \$470.00)	\$940.00
Penalty for 2 month notice (2 x \$1,000.00)	2,000.00
Recovery of Filing Fee	150.00
<b>Total =</b>	<b>\$3,090.00</b>

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 22, 2017

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Residential Tenancy Branch