



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MT, OLC, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application and amended application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for more time to make an application to cancel a notice to end tenancy - Section 66;
3. An Order for the Landlord's compliance - Section 62;
4. An Order for the return of the security deposit - Section 38;
5. A Monetary Order for compensation - Section 67; and
6. An Order to recover the filing fee for this application - Section 72.

### Preliminary Matters

Service: The Landlord did not attend the hearing. I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution and notice of hearing in person on February 16, 2017 and with the amendment to the application in person on February 20, 2017 in accordance with Section 89 of the Act. The Landlord was served in person both times at the Landlord's upper level residential address. The Tenant was given full opportunity to be heard, to present evidence and to make submissions on its application.

Claims: The Tenant confirms that the tenancy ended and that the claims in relation to the notice to end tenancy were made in error. As the tenancy has ended I dismiss

these claims. As the claim for a landlord's compliance is relevant only to an ongoing tenancy, I also dismiss this claim.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to compensation for the Landlord's end of the tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a basement rental unit with the Landlord residing in the upper level of a house started in September 2015. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. Rent of \$950.00 was payable on the first day of each month.

In November 2016 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use (the "Notice"). The reason indicated on the Notice is that the rental unit was sold and the purchaser provided a letter that the purchaser or close family member of the purchaser would occupy the unit. On or about November 30, 2016 the Tenant gave notice to move out of the unit and on December 26, 2016 returned the keys to the Landlord. The Tenant had paid the full rent for December 2016 and the Landlord refused to pay the Tenant compensation for having ended the tenancy with the Notice. The Tenant claims the equivalent of one month's rent in compensation.

The Tenant did not provide the Landlord with a forwarding address in writing due to some concerns with the Landlord. The Tenant claims return of the security deposit.

The Tenant states that the house was not sold to a 3<sup>rd</sup> party, that someone is living in the basement rental unit and that the Landlord still lives in the unit. The Landlord accepted service of the Tenant's applications at the upper level of the house in late February 2017. The Tenant has driven by the house at least once a month since

moving out of the unit and has seen the Landlord's car parked at the house with the same pictures on the wall and television mounted over the fireplace. The Tenant claims the equivalent of two month's rent in compensation.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Tenant did not provide her forwarding address in writing to the Landlord I find that the Tenant made the claim for the return of the security deposit too early. I dismiss this claim with leave to reapply should the Tenant provide such address and should the Landlord not deal with the security deposit in accordance with the Act following receipt of such address.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for 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. Based on the undisputed evidence that the Landlord gave the Tenant a notice to end tenancy for landlord's use and refused to pay the Tenant the equivalent of a month's notice, I find that the Tenant is entitled to **\$950.00**.

Section 51 further provides that if steps have not been taken to accomplish the stated purpose or reason for ending the tenancy for landlord's use within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Based on the undisputed evidence that the Landlord was still living in the unit in February 2017 I find that the Tenant has substantiated that

the Landlord did not sell the unit to a purchaser who asked to move into the unit. As a result I find that the Tenant is entitled to compensation of **\$1,900.00**.

As the Tenant's application has met with substantial success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,950.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,950.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 13, 2017

---

Residential Tenancy Branch