



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, MNSD, OLC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence provided has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing the tenant advised that he has vacated the rental unit and the application for an order cancelling a notice to end tenancy for landlord's use of property is withdrawn.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant 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 the 2 Month Notice to End Tenancy for Landlord's Use of Property?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The tenant** testified that this tenancy began in September, 2015 and a tenancy agreement was signed by the parties for a month-to-month tenancy commencing on October 1, 2015. Rent in the amount of \$1,250.00 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 tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided.

The tenancy agreement specifies monthly rent of \$1,250.00 including water, electricity, heat, stove, oven, refrigerator, dishwasher, window coverings, carpets, laundry facilities, garbage collection, parking and sewage disposal. However the tenant testified that \$250.00 of the rent was to pay for utilities and the parties had agreed to compare actual electricity and gas usage and make monetary adjustments to the amounts paid each year, but that was only applicable to gas and electricity- water, sewer and garbage collection were included in the \$1,000.00 per month rent.

The tenant testified that in doing the comparisons, the tenant had overpaid by \$817.93. A copy of a receipt from the landlord dated October 1, 2015 has been provided showing that the tenant paid \$500.00 rent for September 15 to 30, 2015, \$125.00 for utilities over the same period and a \$500.00 security deposit. It states the rent "for the following months will be \$1,250.00 (\$1,000 rent and \$250.00 utilities.)" The tenant has also provided copies of correspondence between the parties, one of which shows that the tenant withheld rent for October, 2016 due to an overpayment of utilities.

The landlord told the tenant that the house would sell if listed and asked how long the tenant needed to move out. The tenant replied that the notice required by law was necessary. However, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided for this hearing, but the reason changed. It is dated August 17, 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)."

The tenant provided the landlord with a letter which contained notice that the tenant was moving out on October 22, 2016 and a forwarding address on October 11, 2016 by dropping it off with the landlord's accountant, which is the same place the tenant submitted

work orders for work the tenant had done for the landlord by agreement. A copy of the October 11, 2016 letter has been provided for this hearing.

The tenant was not able to find accommodation in the community and had to move to another community, and then move again to get back to his home-community. The tenant vacated the rental unit on October 22, 2016. The house was listed for sale but didn't sell, and sat vacant for some time before selling. The tenant claims double the monthly rent (or \$2,000.00) and moving expenses of \$500.00 for each of the 2 moves, and \$267.00 for moving out earlier than the end of the month.

The tenant did not agree in writing to any deductions from the security deposit, and the landlord has not served the tenant with an application for dispute resolution claiming against it.

The tenant did not pay rent for September, as compensation required under the *Act*, and withheld October's rent due to the overpayment in utilities.

The tenant claims \$3,516.70, and testified that if the landlord had waited until the house sold before issuing the notice to end the tenancy the tenant would not have had to move twice.

**The landlord** testified that the tenant didn't pay any rent for September or October, 2016. Also, the landlord had to hire someone to clean the rental unit and presented the tenant with the bill.

The landlord was leaving for Mexico in November, 2016 and didn't want to deal with the tenancy while away so gave the notice to end the tenancy. Also, the landlord's son intended to move into the rental unit and about 3 weeks after the tenant moved out, the landlord's son changed his mind and the rental unit sat vacant until sold about 2 months ago.

The landlord did not make an application for dispute resolution claiming against the security deposit.

### Analysis

The parties disagree with respect to what should or should not be included in the rent for utilities. The tenancy agreement is clear that utilities are included in the rent of \$1,250.00 per month, and I so find.

A landlord who serves a tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property must compensate the tenant the equivalent of one month's rent, which is deemed to be moving expenses. In this case, the parties accomplished that by not charging or paying rent for the month of September, 2016. The tenant claims compensation for 2 moves, but there is no evidence before me that the landlord was to blame for the tenant not being able to stay in the first accommodation he moved to, and the equivalent of 1 month's rent is above the amount of the tenant's claim. I find that the tenant has been reimbursed proper moving expenses by not paying rent for September, 2017, and I dismiss the tenant's claim for moving expenses.

The *Act* also permits a tenant to move out earlier than the effective date of the landlord's notice and paying rent to the date of move-out instead of to the end of the month, so long as the tenant gives the landlord not less than 10 days written notice to do so. In this case, the tenant has claimed the difference of \$267.00. The evidence before me is that the tenant provided such notice on October 11, 2017, but didn't pay any of the rent and therefore is not entitled to any compensation.

The *Act* also states that if a landlord who gives such a notice doesn't use the rental unit for the purpose contained in the notice within a reasonable time after the end of the tenancy and for at least 6 months, the landlord must repay the tenant double the monthly rent. In this case, the parties agree that the landlord did not use the rental unit for the purpose contained in the notice and therefore, I find that the tenant has established a claim for double the monthly rent, or \$2,500.00.

A landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return a security deposit in full or make an application for dispute resolution claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. There is no question that the landlord did not make an application for dispute resolution and did not return the security deposit. The tenant testified that the tenant's forwarding address was given to the landlord at his accountant's office on October 11, 2016, and the landlord did not dispute that and has not returned the security deposit or applied for dispute resolution claiming against it. Therefore, I find that the tenant has established a claim for double, or \$1,000.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

The tenant didn't lead any evidence with respect to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement. Since the tenancy has ended, I dismiss that portion of the tenant's application.

Conclusion

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

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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: August 10, 2017

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Residential Tenancy Branch