



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38 including double the amount;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

### Issues

Is the tenant entitled to return of the security deposit including double the amount?

Is the tenant entitled a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

The tenancy began on July 5, 2016 with a monthly rent of \$950.00. The tenants paid a security deposit of \$475.00 which the landlord continues to retain. The rental unit is a 1 bedroom basement suite in a residential house. The landlord actually purchased the house from the tenants and then permitted the tenants to rent the basement suite as they needed a place to stay.

On December 26, 2016, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of March 1, 2017.

The tenants vacated the rental unit on February 28, 2017. The tenants provided a forwarding address to the landlord in writing on this date. The landlord acknowledged receipt of the forwarding address and did not dispute the tenants claim for return of the security deposit including double the amount under section 38 of the Act.

The tenants are also claiming an amount equivalent to double the monthly rent as compensation for the landlord not using the rental property for her own use after issuing the 2 Month Notice.

In support of their claim the tenants submit they were advised by a neighbor that someone is operating a tattoo parlor out of the basement suite. The tenants submitted craigslist ads and pictures of the tattoo parlor being operated with the rental unit address also being advertised on the website. The tenants also submitted a craigslist advertisement they printed on August 14, 2017 advertising the rental unit as available for rent immediately. The tenants submit the advertisement is still up on the website.

The landlord submits she owns a licensed home based business a nail artist. After purchasing the home, she set up her studio in the one of the small bedrooms upstairs. She found this space to be too small and needed more space. She had her two children reside upstairs in the 3 bedroom home and they each need their own room. She served the tenants with the 2 Month Notice so she could use the downstairs space. She moved her business downstairs shortly after the tenants vacated. She has submitted statements from various clients stating they have had their nails done in the basement of the home as well as pictures of her nail studio set-up. The landlord testified that the girl who does tattoos is a close friend. She lets her friend use her place occasionally to do tattoos. She has no rental agreement with this friend. She does not know why her address was on her friend's website but testified that it was only up there for a couple of days. The landlord testified that it is her understanding she can re-rent the rental unit 6 months after issuing a 2 Month Notice. She testified that she just put up the ad to see what she could get for the suite. The ad does say the rental unit is available immediately but she did not post any specific date. The rental unit is still not re-rented and she continues to operate her business out of it.

### Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an

Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenants did provide a forwarding address in writing to the landlord. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$950.00, which is double the original security deposit of \$475.00.

Section 51 (2) of the Act provides that 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, or the purchaser, 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 find the tenants have provided insufficient evidence that the landlord has not occupied the rental unit for her own use. I accept the landlord's testimony and evidence that she is using the basement suite for her own home based business. I accept the landlord's testimony that she does not have any lease agreement in place with her friend to operate a tattoo parlor and that she only occasionally allowed her friend to utilize the space. The tenants have not submitted sufficient evidence that the arrangement is more than this and that the tattoo business is being operated full-time out of the rental unit or that the friend is actually residing in the rental unit. With respect to the craigslist ad for re-renting the rental unit, I find the evidence from both parties was that the ad was still posted and the rental unit has not yet been re-rented. I accept the landlord's evidence that she continues to occupy the rental unit in the meantime. The landlord is obligated to do so at least until August 31, 2017 which would be the end of the 6 month period required under the Act.

I dismiss the tenants claim for an amount equivalent to double the monthly rent.

As the tenants were only partly successful in this application, I find that the tenants are only entitled to recover one half (\$50.00) of the filing fee paid for this application from the landlord for a total monetary award of \$1000.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1000.00. 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.

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 24, 2017

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Residential Tenancy Branch