



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD

### **Introduction**

Both parties, counsel for the tenant, and witnesses attended the hearing and gave sworn testimony. The tenant made two Applications for Dispute Resolution with amendments, one dated July 11, 2017 and the second dated August 24, 2017. The first one dealt with the security deposit and the second together with an amendment dealt with the security deposit and a potential refund of rent pursuant to section 51 of the Act and damages. The tenant provided evidence that she had served the landlord with the Applications for Dispute Resolution and amendments by registered mail and by text and email with her forwarding address. The landlord agreed he had received them as stated. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) An Order to compensate the tenant with double the rent pursuant to sections 49 and 51 as the landlord did not use the unit according to his stated purpose
- c) Compensation for damages suffered due to the illegal eviction.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act?

Has the tenant proved on the balance of probabilities that the landlord did not use the unit for the stated purpose in the section 49 Notice and she is entitled to double the monthly rent pursuant to section 51 of the Act?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit and pet damage deposit totalling \$1200 (receipt provided) and agreed to rent the unit for

\$1200 a month. Pursuant to a section 49 Notice to End Tenancy for landlord's use of the property, the tenant vacated the unit on April 30, 2017 and provided her forwarding address in writing on April 24, 2017. The address was that of a friendly neighbour who assisted her at the time. The landlord agreed these facts were correct. The landlord returned \$594.56 of the deposit and retained the rest for a propane tank refill. He said he did not file an Application to make this claim and the tenant disagrees with it. The remainder of the tenant's deposit has never been returned and she gave no permission to retain any of it. As the landlord had not filed an Application to claim against the deposit for the utility of propane, I advised him in the hearing to do this within the two year time limit specified in the Act if necessary.

On the second Application, the tenant claims double the monthly rent pursuant to section 51 as she says the landlord has not occupied the property or used it for the purpose specified in the Two Month Notice to End Tenancy. She also claims damages which she suffered due to this eviction which she terms illegal. She provided unsworn letters from neighbours who state that they have not observed the landlord on the property but have observed a young couple there. One letter writer said he went up to the door and the man who greeted him said he was the uncle of the owner. We took a break so the tenant might call him as witness but he was unavailable due to work.

The landlord said he is living on the premises but travels a lot for work, recently 19 of the 22 work days. It is his primary residence and his adult daughter lives with him. He provided evidence of her car at the premises and papers on her license to show it is her car. We took a break and he called her as witness. She gave sworn testimony that she is residing in the premises with her Dad who seldom can be there due to work. In response to questions, she said she uses her mother's address for mailing as she is in a nearby community. She has kept this address although she has moved to various cities in the past few years. She has never been questioned by the insurer as to her resident address. She moved out of her mother's home into these premises to live with her father as it is in the community where she is working now. She may have to move again next year.

The tenant claims \$2400 (twice the monthly rent) for she states the landlord is not occupying the premises as given in his reason for the Two Month Notice. She asks for further damages for storage (\$1007.88 + \$283.50) plus, aggravated damage for homelessness (\$1500). She acknowledged these damages are based on her losses due to illegal eviction.

In evidence are letters from neighbours, emails, photographs, a previous Decision on cancelling the Two Month Notice to End Tenancy, receipts for the damages claimed and statements of the parties. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

The *Residential Tenancy Act* provides:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that she paid \$1200 in security deposit and pet deposit, served the landlord by email and text with her forwarding address in writing on April 24, 2017 and vacated on April 30, 2017. I find she gave no permission for the landlord to retain the deposit and only received a refund of \$594.56. I find the landlord

agreed with these facts. The landlord stated he has not filed an Application to claim against the deposit. I find the tenant entitled to recover double her security deposit.

In respect to the tenant's claim for compensation pursuant to section 51 of the Act, I find The *Residential Tenancy Act* provides:

**Tenant's compensation: section 49 notice**

**51** (1) *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.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

*(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*

*(2) In addition to the amount payable under subsection (1), if*

*(a) 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*

*(b) 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.*

After carefully considering all the evidence, I find insufficient evidence to prove on a balance of probabilities that the landlord is not using the rental unit for the stated purpose. I note in the earlier hearing, the landlord had given sworn evidence that he intended to occupy the unit himself but he also noted he would be travelling frequently for work. I note the decision also stated the tenant had given evidence that the property manager had told her the owner wanted to end the tenancy for he wanted the place for

himself or a close family member. The arbitrator found on the evidence that the landlord had established a good faith intention to use the rental unit for the purposes stated in the Notice.

In this hearing, I find the landlord's testimony was credible. He spoke in a straightforward manner and his evidence was consistent. His credibility was supported by his daughter's testimony. I find the weight of the evidence is that he is using the rental property for the purpose he stated in the Notice to End Tenancy that is to occupy it himself as a primary residence and to have his adult daughter live with him. I find his daughter's evidence was also credible as she supported her decision to move into the premises with logical reasons. Therefore, I dismiss this portion of the tenant's claim.

I find her claim for damages is based solely on her claim of illegal eviction. I find her tenancy was legally terminated pursuant to sections 49 and 55 of the Act. Therefore, I find the landlord did not breach her tenancy agreement or violate the Act so he is not responsible for her losses claimed as a consequence. I dismiss this portion of her claim.

### **Conclusion:**

I find the tenant entitled to twice her security deposit less the refund received. She is entitled to a monetary order as calculated below. No filing fees were paid. I dismiss the balance of her claim in its entirety without leave to reapply.

Original deposits	1200.00
Double deposits pursuant to s.38	1200.00
Less amount refunded	-594.56
<b>Total Monetary Order to Tenant</b>	<b>1805.44</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: September 07, 2017

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Residential Tenancy Branch