



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNSD MNDC FF

### **Introduction**

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

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 2:20 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on March 31, 2017. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on April 05, 2017, five days after mailing. The landlord did not submit any written evidence for this hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

### **Background and Evidence**

This tenancy began on August 1, 1993 and ended on March 31, 2015 when the tenant moved out pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated

February 24, 2015, with an effective date of April 30, 2015. Monthly rent was set at \$1,534.14. The landlord had collected a security deposit in the amount of \$450.00 at the beginning of the tenancy, and continues to hold this deposit. The tenant testified that he had returned the keys on March 31, 2015, and a walk through inspection was completed on April 1, 2017.

The tenant provided the landlord with his forwarding address on March 31, 2015, which was included in the tenant's evidence.

The tenant testified that both parties were before an Arbitrator on September 28, 2015 for the landlord's application for unpaid utilities, which was dismissed by the Arbitrator. The tenant testified that the landlord has not returned any portion of the tenant's \$450.00 security deposit, and withheld \$50.44 in rent for April 1, 2015 despite the fact that the tenant had moved out and returned the keys on March 31, 2015.

The tenant testified that he had given the landlord 10 days' notice by way of a letter dated March 20, 2015 indicating that he wished to vacate the property on March 31, 2015 instead of the effective date of the 2 Month Notice. The letter read "this letter is to inform you that I will be vacating the property at month end March 31, 2015. As per the tenancy act and upon receipt of your notice of eviction I am to serve upon you and or your address a signed letter giving you ten days written notice. Accept this letter as my 10 day written notice to end tenancy effective April 1, 2015." The landlord responded by way of a letter dated March 24, 2015 with the subject "re: March 31<sup>st</sup> move out" confirming receipt of the tenant's letter, and giving the tenant an option to meet any time after noon on March 31, 2015, or between 2:00 p.m. and 3:00 p.m. on April 1, 2015.

The tenant testified that he was never compensated one months' rent for the landlord's 2 Month Notice to End Tenancy. The tenant's evidence included a document titled "Rental Rebate" which itemizes a rebate of \$1,534.14 minus \$50.44 for pro-rated rent for April 1, 2015. Below is a signed statement by the tenant stating "I, ---, do hereby acknowledge receipt of the above mentioned cheque #006 in the amount of \$1,483.70. Below the statement is an image of a cheque dated April 1, 2015 for \$1,483.70 indicating "Rental Rebate for 2 mo Notice issued in the tenant's name.

The tenant applied for a monetary order as set out in the table below:

Item	Amount
Return of pro-rated rent for April 1, 2015	\$50.44
Compensation for 2 Month Notice	1,534.14
Return of Security Deposit	450.00
Compensation for Landlord's failure to return deposit	450.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$2,584.58</b>

## **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days 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 for Dispute Resolution seeking an Order allowing the landlord 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 return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit.

**Section 51** of the *Act* reads in part as follows:

**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.*

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." Section 50(3) of the *Act* states that "a notice under this section does not affect the tenant's right to compensation under section 51."

Section 45 of the *Act* establishes how a tenant may end a tenancy. Section 45(4) of the *Act* requires that “a notice under this section must comply with section 52 [form and content of notice to end tenancy]. Section 52 of the *Act* reads in part as follows:

- 52      *In order to be effective, a notice to end tenancy must be in writing and must...*
- (a) be signed and dated by the landlord or tenant giving the notice,*
  - (b) give the address of the rental unit,*
  - (c) state the effective date of the notice,...*

I find that the tenant’s notice to end their tenancy earlier than the effective date of the 2 Month Notice is valid and complies with the requirements of the *Act* as stated above. However, the tenant’s written notice identified April 1, 2015 as the effective date of their proposed end to this tenancy. The letter is ambiguous as to what date the tenancy will end as the letter indicates March 31, 2015 as the date the tenant had intended to vacate the home, and the request for the move-out inspection was for March 31, 2015. The landlord’s response noted March 31, 2015 as the date of the move-out, and the tenant returned the keys to the landlord on that date. The walk through inspection took place the next day by mutual agreement of both parties.

Under these circumstances, section 53(1) and (2) allow a Dispute Resolution Officer to correct an incorrect effective date stated in a notice to end tenancy when the effective date “is earlier than the earliest date permitted under the applicable section.” In this case the tenant’s notice could not take effect on April 1, 2015 as stated in the tenant’s notice. I find that the earliest that the tenant’s written notice to end this tenancy could have taken effect was March 31, 2015. I also find that the tenant had vacated the property on March 31, 2015 and that the landlord acknowledged this date in the landlord’s written response.

I find that the tenant had vacated the property on March 31, 2015, which was acknowledged by the landlord in the landlord’s written letter dated March 24, 2015. I find that the landlord did not have the right under section 57(3) of the *Act* to apply one day’s rent against the tenant for overholding when the tenant did not occupy the home after March 31, 2015. Accordingly I find that the tenant is entitled to recover the \$50.44 withheld by the landlord for April 1, 2015 rent.

The tenant also applied to recover the one month’s rent he is entitled to under section 51(1) of the *Act* for the landlord’s 2 Month Notice. I find that the evidence shows that the tenant had received this compensation on April 1, 2015 by way of a cheque issued to the tenant from the landlord, minus the \$50.44 for overholding. The cheque was accompanied by a signed statement by the tenant that he acknowledged receipt of this cheque. Accordingly I find that the landlord had satisfied her obligations under section 51(1) of the *Act*, and this portion of the tenant’s monetary application is dismissed.

I find that the tenant is entitled to recover the filing fee for this application.

## **Conclusion**

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the security deposit retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application, as well as the \$50.44 withheld by the landlord. The remainder of the tenant's application is dismissed.

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$450.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	450.00
Recovery of April 2015 rent applied by landlord	50.44
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,050.44</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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.

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 29, 2017

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Residential Tenancy Branch