



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on November 1, 2017. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the Act):

- An order that the Landlord return all or part of the security deposit or pet damage deposit; and,
- An order granting recovery of the filing fee.

The Landlord and both Tenants attended the hearing and provided affirmed testimony. Neither party raised any issue with respect to the service of the application package or the documentary evidence sent in. Both parties acknowledged receipt of each other's evidence.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants stated that the Landlord returned the security deposit and they are no longer seeking application under this ground, or for interest payable on this amount. As such, I amend the Tenants' application accordingly.

Further, on the application form, the Tenants wrote that they were given a Two Month Notice to End Tenancy for Landlord's Use of the Property (the Notice), and they are seeking compensation (\$1,200.00) for one month's rent. Although the Landlord does not

feel he should have to pay the tenant anything further, he did not object to this issue being discussed in the hearing. The Landlord also provided written statements in response to this issue. Given this information the Tenants included on their application form under the "Details of Dispute" section, I amend the Tenants' application to include consideration of whether or not they are entitled to compensation that is equivalent to one month's rent, pursuant to section 51 of the *Act*.

### Issues to be Decided

1. Are the Tenants entitled to compensation equivalent to one month's rent, pursuant to section 51 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on October 1, 2015. Rent in the amount of \$1,200.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$600.00, which has now been returned to them. The Landlord provided a copy of the tenancy agreement, which shows that the tenancy was for a fixed term, ending on September 30, 2017.

The Tenants testified that they received the Notice on June 30, 2017, and that it had an effective date of September 30, 2017. They also stated that they ended up finding a new place to live sooner than this and moved out at the end of August 2017. The Tenants are asking for \$1,200.00 in compensation for the month of September.

The Tenants provided a letter, dated September 1, 2017, and addressed to the Landlord, indicating that they wanted the return of their security deposit, as well as one month's rent (\$1,200.00). They also provided the Landlord with their forwarding address in writing at this time. They further stated that they sent the Landlord a text message on August 27, 2017, indicating that they had moved out early.

The Landlord testified that he gave the Notice with a 3 month effective date (September 30, 2017). He further testified that he was giving the Tenants their final month (September of 2017) free of charge, to compensate them in accordance with the *Act*. The Landlord testified that the Tenants chose to move out early, prior to the effective date of the Notice, or the end of their lease, both of which were listed as September 30, 2017.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find as follows:

The Tenants received the Notice on June 30, 2017, and that it had an effective date of September 30, 2017. When a landlord issues a two month notice for landlord's use of the property, the tenant is entitled to receive from the landlord an amount that is the equivalent to one month's rent payable under the tenancy agreement. In support of this finding, I turn to section 51 of the *Act*:

**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.

In this case, the tenancy was set to end at the end of September of 2017 and the Landlord gave the Tenants free rent for the month of September in satisfaction of section 51 the *Act*.

The Tenants stated they moved out on August 27, 2017, and they are asking for a monetary order equivalent to the amount for September rent (\$1,200.00). However, in consideration of this issue, I turn to Residential Tenancy Policy Guideline #30 (c) which states, in the event the landlord issues a Two Month Notice:

*The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy, on a date that is earlier than the effective date of the landlord's notice.*

As such, I find the Tenants were not in a position to end the tenancy earlier than the end of the fixed term tenancy agreement, which was September 30, 2017. Although the Tenants had moved into and taken possession of another rental unit for the month of September 2017, I find they still had use and occupancy of this rental unit for September. I note that no rent was paid by the Tenants for the month of September, despite there being an active tenancy for the rental unit. Given that the Landlord provided the Tenants with the final month of their fixed term lease for free (September 2017), I find the Landlord has met his obligations under section 51 of the *Act*. Given my findings above, the Tenants are not entitled to any further compensation from the Landlord. The Tenants' application is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since the Tenants were not successful in

their application, I dismiss their request to be reimbursed by the Landlord for the cost of their application.

Conclusion

I dismiss the Tenants' application in full

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: November 01, 2017

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Residential Tenancy Branch