



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT MNDCT MNSD

### Introduction

This hearing dealt with an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38;
- A monetary order as compensation under section 51 (2) and 67; and
- Reimbursement of the filing fee under section 72.

Both tenant and landlord attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenant. No issues of service were raised. I find the landlord was served pursuant to section 89.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?
- Is the tenant entitled to a monetary award as compensation under sections 51(2) and 67 of the *Act*?

- Is the tenant entitled to reimbursement of the filing fee under section 72 of the *Act*?

### Background and Evidence

The parties agreed the tenancy began on December 1, 2015 and ended on December 31, 2017. The tenant vacated the unit on December 28, 2017. Rent was \$1,825.00 monthly payable on the first of the month. A copy of the tenancy agreement was submitted in evidence.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$915.00. The parties acknowledge the tenant provided his forwarding address to the landlord at the time he vacated the unit on December 28, 2017. The tenant agreed the landlord could withhold the **only** sum of \$50.00 for damages to the unit.

The landlord unilaterally decided to retain more from the security deposit than the \$50.00 authorized by the tenant. He retained an addition \$300.00 and returned the sum of \$565.00 to the tenant within 15 days of the end of the tenancy, calculated as follows:

ITEM	AMOUNT
Security deposit	\$915.00
Less amount for damages agreed to by tenant	(\$50.00)
Less \$200.00 moving-in fee (no agreement by tenant)	(\$200.00)
Less damages (no agreement by tenant)	(\$100.00)
<b>Security Deposit Returned to Tenant</b>	<b>\$565.00</b>

### *Two Month Notice*

The parties agree that the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") on November 18, 2017. A copy of the Two Month Notice was submitted.

The Two Month Notice gave the following reason for issuance:

*The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

The Two Month Notice contained a vacancy date of January 30, 2018. As agreed by the parties, the tenant vacated the premises at the end of December 2017 prior to the vacancy date, in the Two Month Notice.

The landlord stated the plans to have a family member occupy the unit were suddenly changed on January 3, 2018. On that day, the landlord testified he received negative financial news which unexpectedly required the immediate sale of the property.

The landlord testified that no one owing a voting share in the corporate owner or a close family member of that person occupied the unit after the tenant vacated. The landlord stated the property was sold on January 21, 2018.

The tenant asserted the landlord did not issue the Two Month Notice in good faith. The tenant claimed the landlord never intended to comply with the occupancy requirements of the Two Month Notice and wanted him to vacate to facilitate a planned sale.

#### *Moving-out Fee*

The tenant requests a monetary order for compensation in the amount of \$200.00 as reimbursement for a moving-out fee of \$200.00 paid by the tenant.

The tenant stated that there was no agreement between the parties that he would pay a fee on moving in or moving out. The landlord testified to the contrary and said there was a verbal agreement between the parties to this effect. The landlord acknowledged the provision is not contained in the parties' tenancy agreement. He did not submit any written evidence that this agreement existed between the parties.

The tenant testified that on December 28, 2017, he moved out of the unit located in an apartment building. He stated that during the move, he needed to use the elevator to transport his belongings. He was informed by the landlord he would not be able to use the elevator unless he paid the landlord a \$200.00 moving out fee. The tenant stated this was the first information he had there was a moving in or moving out fee. He reluctantly complied as he knew he had no choice if he was going to move his belongings out of the unit using the elevator. The landlord acknowledged requiring the tenant to pay the fee, but said the tenant knew at the start of the tenancy both a moving in and a moving out fee was required.

### *Security Deposit*

The tenant claims the return of the security deposit, (less the amount of \$50.00 which he agreed could be deducted), doubled under the provisions of the *Act*.

### *Summary of the Tenant's claim*

The tenant claims a monetary order in the amount of **\$5,680.00** calculated as follows:

ITEM	AMOUNT
Section 51(2) – one month rent	\$1,825.00
Section 51(2) – double one month rent	\$1,825.00
Moving out fee	\$200.00
The balance of the security deposit (\$915.00 less \$50.00)	\$865.00
Double the balance of the security deposit	\$865.00
Reimbursement of filing fee	\$100.00
<b>TOTAL</b>	<b>\$5,680.00</b>

### Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord family corporation's use of the property.

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenants were issued the Two Month Notice in November 18, 2017. Recent legislative changes that took effect on May 17, 2018 to these sections of the *Act*, are not retroactive.

Section 51(2) of the *Act* states 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

### *Two Month Notice*

The tenant applied for a monetary award of \$3,650.00, being the equivalent of two months' rent ( $\$1,825.00 \times 2 = \$3,650.00$ ) after having vacated the unit following the issuance of the Two Month Notice based on the stated landlord's use of property.

The landlord testified he did not use the property for the purpose stated in the Two Month Notice. Therefore, I find that the property was not used for the purpose as indicated on the Two Month Notice. I accordingly find the tenant is entitled to a monetary award under section 51(2) of the *Act*, equivalent to double the monthly rent, being \$3,650.00.

I therefore grant the tenant a monetary award in the amount of \$3,650.00 pursuant to the claim under section 51(2).

### *Moving Out Fee*

With respect to the moving out fee, I am satisfied on a balance of probabilities that the tenant was required to pay the moving-out fee to use the elevator required to move out. I find payment of the moving out fee was not a term of the tenancy agreement, and the tenant did not consent voluntarily to the payment.

I therefore find the tenant is entitled to reimbursement of the moving-out fee in the amount of \$200.00 and I award the tenant a monetary order this amount.

Similarly, I also find the tenant did not agree to the deduction from the security deposit of a \$200.00 moving-in fee; I find there is no evidence with respect to such an agreement between the parties. I find the tenant is entitled to compensation pursuant to the award under the following heading concerning the security deposit.

### *Security Deposit*

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award,

pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on December 31, 2017. The tenant provided a written forwarding address to the landlords on December 27, 2017. The landlord did not have permission to keep any amount from the tenant's security deposit other than \$50.00 agreed to by the tenant. The landlords did not return the security deposit in full, as they retained \$350.00 from it. The landlords did not file an application to retain the tenant's security deposit.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

The landlord continues to hold a portion of the tenant's security deposit, totaling \$350.00.

As per section 38(6) of the *Act* and Residential Tenancy Policy Guideline # 17, I find that the tenant is entitled to double the amount of his security deposit of \$915.00, totaling \$1,830.00, minus the \$565.00 portion already returned to him. As discussed, the landlord was not entitled to withhold \$200.00 for the moving in fee or for damages in addition to the amount agreed to by the tenant. The tenant is entitled to a monetary award of \$1,265.00 for this claim.

As the tenant is successful in his claims, he is entitled to reimbursement of the filing fee pursuant to section 72.

### *Summary*

In summary, I grant the tenant a monetary order in the amount of **\$5,115.00** calculated as follows:

ITEM	AMOUNT
Section 51(2) one month rent	\$1,825.00
Section 51(2) one month rent- doubling	\$1,825.00
Security deposit – double (2 x \$865.00)	\$1,730.00
Reimbursement of moving out fee	\$200.00
Reimbursement of filing fee	\$100.00
(Security deposit returned)	(\$565.00)
<b>TOTAL</b>	<b>\$5,115.00</b>

### Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$5,115.00** against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with 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: October 10, 2018

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Residential Tenancy Branch