



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein they sought monetary compensation from the Landlord and recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on January 31, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

### Background and Evidence

The circumstances giving rise to the Tenants' Application relate to a hearing which occurred before the Residential Tenancy Branch on September 18, 2018.

By Decision dated September 20, 2018, the Landlord was ordered to pay the Tenants one month's rent pursuant to section 51(1) of the *Residential Tenancy Act* as well as to return their security deposit. Pursuant to the order, the Landlord was to return the Tenants' security deposit by no later than October 15, 2018, failing which the Tenant was at liberty to apply for return of double the deposit paid pursuant to section 38(6) of the *Act*. The Landlord was also ordered to pay the Tenant the equivalent of one month's rent pursuant to section 51(1) of the *Act*, by no later than September 30, 2018: the effective date of the 2 Month Notice to End Tenancy for Landlord's use.

The Tenant testified that the Landlord returned the security deposit on October 15, 2018 as required by the September 20, 2018 Decision.

The Tenant further testified that the Landlord paid the \$1,050.00 (one month's rent) to the Tenant on October 2, 2018.

The Tenant confirmed that it was their position that the free month's rent should be doubled due to the fact the Landlord paid after the September 30, 2018 effective date of the 2 Month Notice; as such they sought the sum of \$1,050.00 representing double the amounts payable under section 51(1) of the *Act* as well as recovery of the filing fee.

### Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

The Tenants apply for the sum of \$1,050.00 which is equivalent to one month's rent. The basis of their claim is section 51(1) of the *Act* as well as the Order of Arbitrator Hedrich made September 20, 2018.

The Tenants submit that as the Landlord paid the \$1,050.00 *after* the September 30, 2018 effective date of the 2 Month Notice to End Tenancy for Landlord's Use, they should be entitled to double the funds. The Tenants argue that the same doubling provisions with respect to security deposits should apply to payments made pursuant to section 51.

The doubling of a security deposit is specifically provided for in the *Residential Tenancy Act* under section 38(6). Unlike section 38(6), section 51(1) does not have a provision for automatic doubling of the funds in the event of late payment. For greater clarity I reproduce the relevant sections as follows:

**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.

...

(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.

**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.

...

As such, there is no legal basis for the Tenants' claim and I therefore find the Tenants are not entitled to an additional month's rent.

As the Tenants have been unsuccessful, their request to recover the filing fee is similarly dismissed.

**Conclusion**

The Tenants' claim for monetary compensation from the Landlord in addition to recovery of the filing fee is dismissed.

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: January 31, 2019

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Residential Tenancy Branch