



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the pet damage deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlord's failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property, and other expenses?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on February 15, 2017. Rent in the amount of \$600.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord did not collect a security deposit from the

tenant, but collected \$300.00 as a pet damage deposit during the tenancy, which is still held in trust by the landlord. The rental unit is the upper level of a house and the landlord resides on the main level. There is no written tenancy agreement.

The tenant further testified that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated August 15, 2018 and contains an effective date of vacancy of October 31, 2018. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The landlord told the tenant that her grandson would be moving in, but the tenant found an advertisement on FaceBook for rental of the rental unit. Copies of text messages have also been provided for this hearing wherein the landlord told the tenant on October 4, 2018 that no family has moved in, but the tenant testified that the rental unit has been re-rented. The tenant claims 12 times the monthly rent.

The tenant also testified that heat, electricity and internet were all included in the rent but the landlord had all of those services cut off on October 4, 2018 and the tenant stayed with a friend for a few nights.

The tenant began to move out, and on October 14, 2018 attended to retrieve some items and the key to the rental unit wouldn't work. The tenant was to have occupation of the rental unit until October 31, 2018 and not pay rent for that month, but was locked out. The tenant picked up the items that the landlord had left outside, and left. Since the tenant was locked out of the rental unit prior to October 31, 2018, the tenant claims compensation equal to one month of rent.

The tenant also claims \$140.00 for hydro and Telus services at her new location and testified that she would not have had to pay those amounts for October, 2018 if the landlord had not locked the tenant out. A copy of a Telus bill has been provided for this hearing in the amount of \$88.76 for December, 2018. The tenant testified that the bill for October, 2018 was the same amount, but the tenant has not provided a copy of an electric bill.

The tenant also claims for the costs of 4 registered letters to the landlord. The tenant attended at the landlord's residence and tried to give the landlord a letter from an Advocate requesting that the landlord repay the pet damage deposit to the tenant and requesting to meet and negotiate a settlement. The landlord pushed it away, so the tenant taped it to the landlord's door. The landlord ripped up the letter and threw it to the bottom of the stairs. The tenant then sent it by registered mail.

On November 25, 2018 the tenant sent the landlord a letter by registered mail requesting return of the pet damage deposit. A copy has been provided for this hearing, and it contains a forwarding address of the tenant.

The other 2 registered letters were with respect to service required for Dispute Resolution for this hearing and a previous hearing.

**The tenant's witness** testified that she went with the tenant to post the letter and pick up some of the tenant's items from storage on October 14, 2018 and the tenant's key wouldn't work. The tenant was to live there until October 31, 2018.

**The landlord** testified that she did not return the pet damage deposit to the tenant because the landlord had to clean cat litter and cat feces, and felt that since the tenant didn't clean up after her pet, and the pet scratched window frames, the landlord was justified in keeping the pet damage deposit. The landlord did not make an Application for Dispute Resolution and testified that she did not know she had to apply to keep the pet damage deposit.

The landlord also testified that no move-in or move-out condition inspection reports were completed at the beginning or end of the tenancy.

The landlord denies locking the tenant out of the rental unit. The landlord had placed a new key pad on the door, but had not programmed it yet, and the tenant's key would have worked. The landlord was in the garden and observed the tenant and the tenant's witness, who didn't even try to unlock the door. The tenant had mostly moved out, and the landlord left a bag and a plant on the porch and testified that she was doing the tenant a favour. There were no food or clothing or personal articles in the rental unit.

The landlord also denies having hydro disconnected, and testified that if the electricity and other services were disconnected to the rental unit, that would disconnect them from the landlord's suite.

The landlord's grandson was going to move into the rental unit, but that didn't happen, so the landlord re-rented the rental unit effective January, 2019.

### Analysis

The *Residential Tenancy Act* specifies that a landlord must return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the

tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

The *Act* also states that if a landlord fails to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, the landlord's right to claim against a security deposit or pet damage deposit for damages is extinguished. The landlord testified that neither report was completed. Therefore I find that the landlord's right to claim against the pet damage deposit is extinguished.

The parties agree that the Two Month Notice to End Tenancy for Landlord's Use of Property is effective October 31, 2018, and I find that to be the date the tenancy ended. The tenant has provided evidence of having given the landlord her forwarding address in writing on November 25, 2018 by registered mail, which is deemed to have been received 5 days later, or November 30, 2018. The landlord did not return the pet damage deposit and did not make an Application for Dispute Resolution claiming against it. Since the landlord did not do either within 15 days I find that the tenant is entitled to double the amount, or \$600.00.

The *Act* also specifies that if a landlord serves a tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord is required to use the rental unit for the purpose contained in that Notice. In this case, there is no doubt that the landlord did not, and never did have any intention of using the rental unit for a parent, spouse or child of the landlord or the landlord's spouse. A grandchild of the landlord does not qualify, and the landlord re-rented the rental unit in January, 2019. Therefore, I find that the tenant is entitled to compensation as required under Section 51, as follows (underlining added):

**Tenant's compensation section 49 notice**

**51** (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As a result of the landlord's failure to use the rental unit for the purpose contained in the Notice, I find that the tenant has established a claim of 12 month's rent, or \$7,200.00.

With respect to the balance of the tenant's monetary claim, in order to be successful, the onus is on the tenant to establish the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenant made to mitigate any damage or loss suffered.

The landlord testified that she observed the tenant and witness attempt to enter the rental unit, but testified that they didn't try to unlock the door. There is no evidence before me that the tenant did anything to mitigate a loss of the rental unit for the month of October, 2018. I accept the undisputed testimony of the landlord that she was also present, and the tenant and witness didn't ask the landlord to open the door, or have any similar conversation. I find that the tenant has failed to establish element 4 in the test for damages. Given that the tenant didn't pay rent for that month, I dismiss the tenant's \$600.00 claim for compensation for the month of October, 2018.

The cost of serving documents by registered mail for a Dispute Resolution hearing is not recoverable under the *Act*. I accept that at least one of the documents sent to the landlord by registered mail was not for a Dispute Resolution hearing, but was a letter from an Advocate to attempt to settle or negotiate. However, refusal to accept the letter when the tenant attempted to deliver it in person is not proof of the landlord's failure to comply with the *Act* or the tenancy agreement. Further, if a tenant chooses to provide the landlord with the tenant's forwarding address by registered mail, there is nothing in the *Act* requiring the landlord to pay for that, and I dismiss the tenant's claims for registered mail.

With respect to utilities, the tenant has provided a copy of a Telus bill, but having found that the tenant has failed to establish that the landlord locked the tenant out of the rental unit prior to the end of October, 2018, and considering that the tenant has not provided copies of the utility bills claimed, I find that the tenant has failed to establish elements 2 and 3 of the test for damages (above).

In summary, I find that the tenant has established monetary claims as against the landlord for double the amount of the pet deposit, or \$600.00 and \$7,200.00 compensation as set out in Section 51(2) (a) and (b), for a total of \$7,800.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,800.00.

This order is final and binding and may be enforced.

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: May 02, 2019

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Residential Tenancy Branch