



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDCT and MNSD

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which they applied for the return of their security deposit and for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement.

The female Tenant stated that the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch in March of 2019 was served to the Landlords, via registered mail, although she cannot recall the exact date of service. The female Landlord stated that these documents were received on March 09, 2019 or March 10, 2019. As the Landlords acknowledged receipt of the documents, the evidence was accepted as evidence for these proceedings.

The female Landlord stated that evidence the Landlords submitted to the Residential Tenancy Branch in May of 2019 was served to the Tenants, via registered mail, although she cannot recall the exact date of service. The female Tenant stated that these documents were received on June 14, 2019. As the Tenants acknowledged receipt of the documents, the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

### Preliminary Matter

The female Tenant asked that the Application for Dispute Resolution be amended to reflect the correct spelling of the female Landlord's surname, as provided by the female Landlord at the hearing. The Landlords did not object to the amendment and the Application for Dispute Resolution has been amended accordingly.

### Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of a Two Month Notice to End Tenancy or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the Notice to End Tenancy?

Are the Tenants entitled to the return of double their security deposit?

### Background and Evidence

The Landlords and the Tenants agree that:

- this tenancy began prior to the Landlords purchasing the property in 2016;
- a security deposit of \$500.00 was paid to the original Landlord;
- the security deposit was returned to the Tenants on September 27, 2018;
- on June 23, 2018 the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use;
- the Notice to End Tenancy declared that the rental unit must be vacated by August 31, 2018; and
- the Notice to End Tenancy declared that the rental unit will be occupied by the landlord, the landlord's spouse, or a close family member of the landlord or landlord's spouse.

I note that in the Application for Dispute Resolution the Tenants declare the security deposit was returned on September 24, 2019.

The Landlords and the Tenants agree that the keys to the rental unit were returned on August 31, 2018.

The Tenants are seeking compensation because the Landlords or a close family member of the Landlords have not moved into the rental unit. The female Landlord stated that:

- she moved across the street from the rental unit;
- for many months she did not see any activity at the rental unit;
- in March of 2019, after the Landlords were served with the Application for Dispute Resolution, she observed some women working in the unit, who appeared to be painting the unit.

The female Landlord stated that:

- when the Two Month Notice to End Tenancy was served to the Tenants, the Landlords planned on moving into the rental unit;
- the Landlords are renting their current accommodations;
- when the Two Month Notice to End Tenancy was served to the Tenants, the Landlords did not realize the extent of the renovations needed in the rental unit;
- renovations in the unit commenced in October of 2018;
- between October of 2018 and March of 2019 the rental unit was cleaned and the floor coverings were removed;
- the rental unit was painted sometime in March of 2019;
- the flooring was replaced in April of 2019;
- they intend to renovate the kitchen, but those renovations have not yet commenced;
- they intend to renovate the bathroom, but those renovations have not yet commenced; and
- the renovations have been delayed due to the cost of the renovations.

The Tenants are seeking double the return of the security deposit, less the \$500.00 that has already been returned to them. This claim is based on the fact that the security deposit was not returned until more than 15 days after the tenancy ended.

The female Tenant stated that the Tenants did not provide a forwarding address to the Landlords, in writing. She stated that she provided the Landlord with a forwarding address by pointing at her new home, which is across the street from the rental unit. The female Landlord stated that the Tenants did not provide a forwarding address to the Landlords, in writing.

### Analysis

On the basis of the undisputed evidence I find that the Tenants were served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which required them to vacate the rental unit by August 31, 2018. This Notice declared that the rental unit would be occupied by the landlord, the landlord's spouse, or a close family member of the landlord or landlord's spouse.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice to end tenancy or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice to end tenancy, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

On the basis of the testimony of the female Landlord and in the absence of any credible evidence to the contrary, I find that on October of 2018 the Landlords began renovating the rental unit so that they can move into the unit. I find that removing flooring and cleaning the unit constitutes the start of a renovation. Although the female Tenant testified that she did not observe this aspect of the renovation, I find it entirely possible that those renovations could have occurred without the Tenants being aware of them.

As the Landlords commenced renovating the rental unit for the purposes of moving into it within two months of the tenancy ending, I find that steps were taken to accomplish the stated purpose for ending the tenancy on the Notice to End Tenancy within a reasonable period after the effective date of the Notice.

On the basis of the testimony of the female Landlord and in the absence of any evidence to the contrary, I find that the Landlords are continuing to renovate the rental unit, albeit very slowly, so they can move into the rental unit. The female Landlord's testimony in this regard is corroborated by the female Tenant's testimony that she has seen women working in the unit.

I note that the Landlords are required to occupy the rental unit and they are not required to live in the rental unit. In adjudicating this matter I was guided by Black's Online Law Dictionary, which defines "occupy" as "to hold in possession; to hold or keep for use.

In concluding that the rental unit is being occupied by the Landlords I was heavily influenced by the absence of any evidence that shows the rental unit is being occupied by someone other than the Landlords; that it is being advertised for rent; or that it is being advertised for sale. As the Landlords continue to slowly renovate the rental unit for the purposes of moving into it, I find that the rental unit is still being occupied by the Landlords.

As the evidence shows that steps were taken to accomplish the stated purpose for

ending the tenancy under section 49 within a reasonable period after the effective date of the Notice to End Tenancy and that the rental unit is still being occupied by the Landlords, I find that the Tenants are not entitled to compensation pursuant to section 51(2)(a) of the *Act*. I therefore dismiss this portion of the Tenants' claim.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Tenants had not provided a forwarding address to the Landlords, in writing, by the time the security deposit was returned. As the Landlords returned the security deposit prior to receiving the forwarding address, in writing, I find that they complied with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords not comply with section 38(1) of the *Act*, I find that they are not obligated to pay the Tenants double the security deposit. I therefore dismiss this portion of the Tenants' claim

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their claim to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Tenants' Application for Dispute Resolution 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: June 26, 2019

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Residential Tenancy Branch