



# 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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a refund of tenant's security pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant attended the hearing. The tenant had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The landlord did not attend the hearing. I kept the teleconference line open for the duration of the hearing time for ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The tenant testified that she served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on February 17, 2019. The tenant testified that the registered mail was not picked up by the landlord.

The tenant testified that the rental unit was the basement of single family residence house. The tenant stated that the upper portion of the house was unoccupied during the tenancy and the landlord lived in another province.

The tenant stated that she received a written letter from the landlord stating that the landlord was moving into the house and he notified that the tenant needed to move out

to accommodate the landlord. The tenant sent the notice by registered mail to her former address because the landlord said that he was moving there.

Section 89 of the *Act* authorizes service of Notice of Hearing and Application for Dispute Resolution by registered mail to address the person resides at. Based upon the landlord's own letter stating that he was moving into the rental unit, I find that it is appropriate to serve the landlord by mailing the notice to him by registered mail at the rental unit. The tenant provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the tenant, I find the tenant served the landlord with the documents pursuant to section 89 of the *Act*.

#### Issue(s) to be Decided

Is the tenant entitled to a refund of tenant's security pursuant to section 38?

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

#### Background and Evidence

The tenant testified that the tenancy started with a monthly rent of \$1,000.00 which later increased to \$1,040.00. The tenant paid a \$500.00 security deposit.

The landlord sent the tenant a letter on November 1, 2018 advising her that the landlord was going to move into the rental unit and the tenant needed to vacate the property by February 1, 2019. The notice was a handwritten letter. The landlord did not use the prescribed form.

On December 21, 2018, the tenant proposed an agreement wherein she would move out of the rental unit on January 8, 2019, the tenant pay \$268.39 for prorated rent in January 2019 and the landlord would pay the tenant \$520.00 as compensation for the free month of rent pursuant to section 51 of the *Act* in regards to a landlord's notice to end tenancy for landlords use. The tenant signed a Mutual End to Tenancy form, with a tenancy end date of January 8, 2019, and she sent the form with an attached addendum to the landlord. The addendum enclosed the above-stated terms. The

landlord signed and returned the Mutual End to Tenancy form but he discarded the attached addendum.

The tenant demanded the return of her post-dated January 2019 rent cheque multiple times in December 2018 but the landlord did not comply. The tenant was concerned that the landlord would try to deposit her post-dated January 2019 rent cheque even though she did not believe she was obligated to pay rent in January 2019. The tenant put a stop payment on the cheque which cost her \$12.50. The tenant testified that the landlord did in fact try to deposit the cheque after she put a stop payment on it.

The tenant provided her forwarding address to the landlord in writing on December 21, 2018.

The tenant moved out of the rental unit on January 8, 2019. The tenant testified that there was no condition inspection report done on move in or move out. She testified that left the property in a clean and undamaged condition. The tenant testified that the landlord never returned any portion of the security deposit and she was never served with a dispute application by the landlord to retain the security deposit. The tenant testified that she did not pay rent for January 2019 because the landlord was not co-operative.

### Analysis

The tenant has requested a refund of her security deposit, compensation under the Act for her free month of tenancy pursuant to the landlord's notice to end tenancy for the landlord's use, compensation for the cost of placing a stop payment on her January 2019 rent cheque, and a request for reimbursement of the filing fee. I will address each of these claims separately.

### *Claim for Refund of Security Deposit*

Section 38 of the *Act* states that:

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.

Based on the testimony of the tenant and the Mutual End to Tenancy form, I find that the tenancy ended on January 8, 2019.

Based on the undisputed testimony of the tenant and the written correspondence provided as evidence, I find that the tenant provided the landlord with her forwarding address in writing on December 21, 2018.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the tenancy ended on January 8, 2019, the landlord's deadline to repay the deposit or file an application for dispute resolution was January 23, 2019.

I find that the landlord did not perform either of these requirements by the January 23, 2019 deadline. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit.

#### *Claim for Free Month*

Section 51(1) of the *Act* states that "...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 ... an amount that is the equivalent of one month's rent payable under the tenancy agreement."

I find that the landlord did issue a notice to end tenancy for the landlord's use on November 1, 2018. Accordingly, the tenant is entitled to compensation in the amount of one month of rent, being \$1,040.00, pursuant to section 51(1). However, the tenant

acknowledges that she did owe the landlord \$268.39 for prorated rent for January 2019. Accordingly, the award of \$1,040.00 will be offset by the \$268.39 the tenant owes the landlord for January 2019 rent. As such, I grant the tenant an award of \$771.64 (\$1,040.00 less \$268.39) in compensation pursuant to section 51 of the *Act*.

### *Stop Payment Fee*

The tenant claimed \$12.50 in stop payment fees relating to the January 2019 rent. As stated above, the tenant was entitled to compensation in the amount of one free month of rent pursuant to section 51 of the *Act*. As such, the tenant was entitled to request the return of the January 2019 rent cheque. Since the landlord refused the to return the cheque, I find that the tenant sustained a loss related to the tenancy agreement of \$12.50 to place a stop payment on the cheque. I grant the tenant's request for \$12.50 for compensation relating to the stop payment fee pursuant to section 67 of the *Act*.

### *Filing Fee*

Since the tenant has been successful this matter, I award the tenant \$100.00 for recovery of the filing fee.

The total award to tenant is accordingly \$1,884.14 as set forth below:

Item	Amount
Recovery of double the security deposit (\$500.00 times 2)	\$1,000.00
Compensation pursuant to section 51	\$771.64
Reimbursement for stop payment fee	\$12.50
Filing recovered by tenant	\$100.00
Total award to tenant	<b>\$1,884.14</b>

### Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenant a monetary order in the amount of **\$1,884.14**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to be 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: June 1, 2019

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Residential Tenancy Branch