



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 2:00 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on July 16, 2019, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service. The tenant submits the landlord signed for the package on July 24, 2019.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

## Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

## Background and Evidence

The tenancy began approximately 10 years ago.

On November 15, 2017, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of February 1, 2018.

The tenant vacated the rental unit on January 27, 2018. The tenant paid a security deposit of \$675.00 at the start of the tenancy which the landlord returned to the tenant in May 2018.

The tenant is claiming an amount equivalent to double the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice.

The tenant submits the Two Month Notice was issued on the grounds that the landlord's daughter was to occupy the rental unit. The tenant submits that the landlord just renovated the apartment and since then two men who do not appear to be related to the landlord have moved in. The tenant testified that she heard from a neighbor that two men had moved in. The neighbor provided the tenant with the name of the men that had moved in. The tenant submitted facebook pictures of the two men occupying the suite which she submits also reflects the unit as having been renovated.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant submitted a copy of a text message dated February 2, 2018 as proof of service of a forwarding address. The tenant submits the text was sent to the landlord's realtor who was acting as the property manager.

The tenant is also seeking the filing fee for this application and a previous application filed by the tenant.

### Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Section 88 of the Act sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the Act. As the tenant provided a forwarding address by text message to the landlord, the tenant has not provided the landlord with a forwarding address in writing as required under the Act. It is unknown if the person to who the text message was sent was still operating in the capacity of a property manager at the time the text was sent. Further, the tenant had the landlord's address for service as per the Two Month Notice and could have provided a forwarding address by mail. The landlord's obligation to return a security deposit is not triggered until the landlord received a forwarding address in writing. As the tenant's security deposit has been returned in full, I dismiss the tenant's application for double the amount.

On the date the Two Month Notice was served on the tenant, Section 51 (2) of the Act stated 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

On May 17, 2018 changes to the *Act* came into effect which changed the amount payable from a landlord to a tenant under section 51(2) of the *Act* from double the monthly rent payable to 12 months' rent. This change came into effect after the tenant received the Two Month Notice; therefore, the former provisions of section 51(2) of the *Act* apply to this dispute.

I accept the tenant's uncontested testimony and find that on a balance of probabilities the landlord or a close family member of the landlord did not move into the rental unit within a reasonable period after February 1, 2018, the effective date of the Two Month Notice.

I allow the tenants claim for an amount equivalent to double the monthly rent and award an amount of \$2700.00, which is double the monthly rent of \$1350.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2800.00.

The tenant's request for the filing fee of a pervious application is dismissed. The tenant's previous application was dismissed as the tenant failed to provide sufficient proof of service of that application. The tenant bears the cost of that application.

#### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2800.00. 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 22, 2019

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Residential Tenancy Branch