



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

### Dispute Codes

FFT, MNSD, MNDCT

### Introduction

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

- A monetary award as compensation pursuant to section 67;
- Authorization to recover the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

This matter was originally heard on September 17, 2019 whereby the tenant's application was dismissed. The tenant was successful in her Review Consideration application which resulted in today's hearing being held. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary order as compensation for the landlords' failure to comply with the Act, regulation or tenancy agreement?

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

### Background and Evidence

The tenant gave the following testimony. The tenant testified that her tenancy was from January 3, 2017 until March 31, 2018. The tenant testified that on January 2, 2018 she was given a Two Month Notice to End Tenancy for Landlords Use of Property as the landlord was going to renovate the unit which required it to be empty. The tenant testified that she moved out on March 31, 2018. The tenant testified that she "thinks" she provided her forwarding address to the landlord in April 2018 but he refused to return her deposit in full. The tenant testified that she later found out that the landlord did not renovate the unit and that he ended up re-renting it in

August 2018. The tenant testified that when the landlord purchased the property he cancelled her cable without reducing her rent. The tenant is seeking the return of double her security deposit, twelve months of rent as compensation for the landlord not complying with the basis of the notice to end tenancy and the cost of cable for six months that the tenant incurred because of the landlord cancelling it.

The tenant is applying for the following:

1.	Return of double the security deposit	\$725.00
2.	12 months compensation	8700.00
3.	6 months of cable costs	468.00
4.		
5.		
6.		
	Total	<b>\$9893.00</b>

The landlord gave the following testimony. The landlord testified that he was not sure when he received the tenants forwarding address. The landlord testified that he had a business plan to renovate the unit, however after delving further into the process he made a business decision not to conduct the renovations and re-rented the unit for August 1, 2018. The landlord testified that cable is not included in any of the tenancy agreements for this property and isn't sure why the tenant thinks the landlord is responsible for this cost. The landlord testified that the tenant left the unit dirty and will be pursuing his own claim to recover the costs he incurred.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

#### 12 Months Compensation - \$8700.00

Section 51(1) of the Act requires that a landlord who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
  - (a) 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
  - (b) 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.

The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. In the landlord's own testimony, he acknowledges and concedes he did not act in accordance with what the basis of the notice stated. The landlord was very clear that his intention the entire time was to renovate the home however he made a business decision not to do so and did not accomplish the stated purpose as listed on the Notice to End Tenancy.

The applicants seek payment of compensation in the amount of 12 months of rent, however at the time the notice was issued the legislation only prescribed that two months of compensation of the monthly rent under the tenancy agreement was applicable. I do find that the tenant is entitled to compensation, but for two months as the legislation allows for at that time and is clearly addressed on page two of the Notice to End Tenancy. The tenant is entitled to \$1470.00.

Double the Security Deposit – 725.00

The tenant was unable to provide a clear and concise recollection of when she provided the landlord with her forwarding address. The tenant referred to an email thread in April 2018 where she and the landlord were responding to each other in terms of the deposit however there is no mention of her forwarding address in those emails. The tenant provided documentation that she served the landlord her most recent address in June 2019, however, that was 15 months after the end of the tenancy.

Section 39 of the Act addresses the issue as follows:

**Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

It is worth noting that the tenant sent an email of her forwarding address on January 7, however it does not specify a year nor is there a response from the landlord to indicate that he had received it. As the tenant was unable to provide clear and conclusive documentation that she

provided her forwarding address within one year after the tenancy ended, I must dismiss this portion of her claim.

Cable - \$478.00

The landlord testified that when he purchased the building none of the agreements included cable and was not part of any of the conditions provided to him. The tenant did not provide clear conclusive documentation to show that cable was included in her tenancy, accordingly; I dismiss this portion of the tenant's application.

As the tenant has been partially successful in this application I find that they are entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The tenant has established a claim for \$1570.00. I grant the tenant an order under section 67 for the balance due of \$1570.00. This order may be filed in the Small Claims 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: November 04, 2019

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Residential Tenancy Branch