



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD, MNDC, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit, compensation pursuant to a notice to end tenancy for landlord's use of property and for the recovery of the filing fee. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence. The tenant stated that he had not received the landlord's evidence. The landlord filed proof of having mailed the evidence package on December 02, 2019, to the tenant's forwarding address. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issue to be Decided**

Did the landlord return the security deposit in a timely manner? Is the tenant entitled to the return of double the deposit? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on October 01, 2018 and ended on June 02, 2019. The monthly rent was \$1,250.00. Prior to moving in the tenant paid a security deposit of \$625.00. The rental unit is located in the basement of the landlord's home. The landlord and his family live upstairs.

A copy of the tenancy agreement was filed into evidence. The tenancy was for a fixed term ending on June 01, 2019. The landlord check marked the vacate clause on the tenancy agreement but did not provide the reason. The tenant stated that he requested the landlord multiple times to provide the reason for the vacate clause, but the landlord did not.

On February 04, 2019, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The reason for the notice was that the rental unit was going to be occupied by the landlord or the landlord's close family. The effective date of the notice was June 02, 2019. The tenant did not dispute the notice and moved out on the effective date of the notice. The tenant agreed that he received compensation pursuant to such a notice and was provided with the equivalent of one month's rent. On July 16, 2019 the tenant provided the landlord with his forwarding address in writing. The landlord agreed that he had received it.

The tenant testified that he noticed a rental car parked outside the rental unit shortly after he moved out. The tenant also stated that right from the start of tenancy, the landlord intended to end the tenancy in June 2019 but did not provide any reason for the tenant having to move out, at the end of the fixed term. The tenant stated that despite his requests the reason for the vacate clause was not provided to him.

The tenant believes that the landlord served the notice to end tenancy in bad faith as he also asked the tenant to sign a mutual end to tenancy agreement which the tenant declined. The tenant stated that the landlord did not use the rental unit for his family and therefore the tenant is claiming compensation in the amount of twelve months' rent.

The landlord stated that his daughter was in the hospital for six months and close family expressed their intentions to visit her. The landlord stated that he did not rent out the unit to another tenant but uses it for his own purposes which include accommodating family members when they visit.

The landlord stated that the tenant did not return the keys and he was forced to change the locks. The landlord returned the deposit to the tenant with a deduction of \$187.34 for the cost of changing the locks. The tenant did not agree to the deduction and the landlord did not make application for dispute resolution to authorize him to retain a portion of the deposit. The tenant agreed that he received \$437.66 from the landlord. The tenant is claiming the return of double the deposit minus the amount that he has already received.

### **Analysis**

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

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 as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the rental unit was going to be occupied by the landlord or the landlord's close family.

I accept the testimony of the landlord that he uses the rental unit for his own needs which include accommodating family members who come to visit his hospitalized daughter. The tenant's testimony corroborated the landlord's version of events when he stated that there was a rental car parked outside for a few days. The tenant mostly described what he believed to be a notice to end tenancy served to him in bad faith.

The tenant had the opportunity to dispute the notice at the time he received it if he believed that it was served in bad faith but instead chose to move out. Based on the testimony of the landlord, I find that the landlord has not rented the unit to another tenant and uses the unit for his own personal use.

Based on the above, I find that the purpose for ending the tenancy was that rental unit was going to be occupied by the landlord or the landlord's close family. Accordingly, I find that the landlord accomplished the stated purpose for ending the tenancy under section 49 and therefore I find that the tenant's claim for compensation in the amount of 12 months' rent must be dismissed.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant provided the landlord with his forwarding address on July 16, 2019. The landlord returned a portion of the deposit by making a deduction without the consent of the tenant.

Therefore, I find that the landlord failed to repay the full deposit or make an application for dispute resolution within 15 days of the receipt of the forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The total security deposit paid was \$625.00. Accordingly, the landlord must return \$1,250.00 to the tenant. The landlord has already returned \$437.66 and therefore must return the balance of \$812.34 to the tenant. Since the tenant has proven his case, he is also entitled to the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$912.34. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Regarding the landlord's claims relating to loss that he may have suffered, I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file his own application for damages against the tenant.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$912.34**.

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: December 12, 2019

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Residential Tenancy Branch