



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, CNL, LRE, LAT, OLC, FFT, CNR, PSF

### Introduction

The Tenant files for the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 cancelling a 2-Month Notice to End Tenancy for Landlord’s use signed June 22, 2021;
- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for unpaid rent signed August 4, 2021;
- an order pursuant to s. 67 for compensation due to loss of internet services to be provided by the Landlord under the tenancy agreement;
- an order pursuant to 70 restricting the Landlord’s right of entry into the rental unit;
- an order pursuant to s. 70 authorizing the Tenant to change the rental unit’s locks’;
- an order pursuant to s. 65 that the Landlord provide services or facilities;
- an order pursuant to s. 62 that the Landlord comply with the *Act*; and
- an order for return of the Tenant’s filing fee pursuant to s. 72.

S.S. appeared on her own behalf as Tenant. The Landlord did not attend, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 11:00 AM on October 22, 2021. As the Landlord did not attend, the hearing was conducted in the absence pursuant to Rule 7.3.

The Tenant affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that they were not recording the hearing.

The Tenant advised having been served with the Two-Month Notice to End Tenancy signed June 22, 2021 by having it posted it to her door. The Tenant advises that her

daughter brought the notice to her attention on June 22, 2021. I find that the Two-Month Notice to End Tenancy was served in accordance with s. 88 of the *Act* on June 22, 2021.

The Tenant further advised being served with the 10-Day Notice to End Tenancy signed August 4, 2021, which was posted to her door. The Tenant acknowledged receiving the 10-Day Notice to End Tenancy on August 5, 2021. I find that the 10-Day Notice to End Tenancy was served in accordance with s. 88 of the *Act* and acknowledged received on August 5, 2021.

The Tenant advises having served the Notice of Dispute Resolution and her initial evidence by personally serving both on the Landlord on July 16, 2021. I find that the Notice of Dispute Resolution and initial evidence was served in accordance with s. 89 of the *Act* on July 16, 2021.

#### Preliminary Issue – Amendment to the Application

The Tenant advises that circumstances have changed since initiating the application on June 23, 2021. The Tenant advises having vacated the rental unit on August 31, 2021. After vacating, the Tenant learnt that the Landlord may have re-rented the rental unit and filed an amendment with the Residential Tenancy Branch on October 1, 2021 to include the following relief:

- Compensation equivalent to 12 months rent pursuant to s. 51 of the *Act*; and
- Return of double the security deposit pursuant to s. 38.

Rule 4.1 allows an applicant to amend their application to add, alter, or remove claims from the original application by completing the application and filing it with the Residential Tenancy Branch. Any amendments must be served on the responding party at least 14 days before the scheduled hearing.

Policy Guideline 23 provides further guidance on the procedure to be followed and the considerations to be made when amending an application. As highlighted at page 3 and 4 of Policy Guideline 23, claims in an application must be related to one another as per Rule 2.3 of the Rules of Procedure. Given this, an amendment may only be granted where the amendment is sufficiently related to the original application.

The Tenant advises having served the Landlord with their amendment and additional evidence by way of registered mail on October 4, 2021. The Tenant provides a

photograph of the registered mail envelope showing the Landlord's mailing address and the tracking number. Review of the tracking number shows that the package was picked-up on October 5, 2021, which is more than 14-days from the hearing date. I find that the amendment and additional evidence was served in accordance with s. 89 of the *Act* and was picked up on October 5, 2021.

I further find that the amendments are sufficiently related to the Tenant's original application. The principal issue in the original application was the cancellation of the Two-Month Notice to End Tenancy. Since making the application, the Tenant moved out and learnt that the Landlord may not have fulfilled the purpose for ending the tenancy within the notice. Given the original application was tied to issues of intention and good faith while and the amendments deal with whether the Landlord has, in fact, followed through with their intention, I am satisfied that the issues are intimately related to one another.

The second aspect, that of the return of the Tenant's security deposit, should be dealt with in the application on the basis that the tenancy has now ended. If compensation is payable under s. 51 then any outstanding issues surrounding compensation payable to the Tenant ought also be dealt with at the same time.

Accordingly, I allow the Tenant's amendment and issues surrounding compensation should be dealt with concurrently. Given this, the Tenant's application will proceed on the following issues:

- 1) the Tenant's claim under s. 51 of the *Act* for 12 times the monthly rent;
- 2) return and doubling of the Tenant's security deposit pursuant to s. 38; and
- 3) compensation for loss of amenities during the tenancy.

I have considered the principles of administrative fairness when making the decision to allow the Tenant's amendments. The Rules of Procedure are clear on the process and procedure to be followed when making an amendment to an application. The Tenant has followed Rule 4.1 and served the amendments with additional evidence on the Landlord at least 14-days before the hearing.

The nature of the application has changed though the issues at its heart are the same. The Landlord has chosen to not to file responding evidence, either to the original application and the amendment, or attend the hearing to argue against the amendment despite the Tenant serving them in accordance with the *Act*. It would be procedurally

unfair to the Tenant, having complied the service requirements of the *Act* and following the Rules of Procedure, to penalize them by asking them to file a new application.

#### Preliminary Issue – Late Evidence

Some of the evidence was uploaded to the Residential Tenancy Branch after July 16, 2021 and the Tenant was unable to advise on how or when she served this additional evidence on the Landlord. Review of the evidence provided indicates that the Tenant may have served this additional evidence on August 6, 2021 when serving a previous amendment to dispute the 10-Day Notice to End Tenancy. Being unable to ascertain when, or if, this evidence was provided I decline to allow it into evidence.

#### Issue(s) to be Decided

- 1) What compensation, if any, is the Tenant entitled to under s. 51 of the *Act*?
- 2) Is the Tenant entitled to return of double their security deposit pursuant to s. 38 of the *Act*?
- 3) Is the Tenant entitled to compensation under s. 67 of the *Act* due to the loss of service to be provided under the tenancy agreement?
- 4) Is the Tenant entitled to return of their filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenant advises that the tenancy began on August 15, 2019 and provides a written tenancy agreement as evidence. The Tenant confirmed that rent was \$1,650.00 due on the first day of each month and that the Landlord holds a security deposit of \$800.00 in trust for the Tenant.

The residential property was recently purchased by the Landlord, with the Tenant advising that the Landlord took possession on May 15, 2021. The rental unit is a basement suite within the residential property.

The tenancy agreement provide that internet services are included in rent. The Tenant advises that internet services were interrupted from May 15 to June 2 after the Landlord

took possession of the residential property. The Tenant advises that she has two school aged children who were taking classes, in part, remotely due to the COVID-19 Pandemic. She indicates that the lack of internet was disruptive to their learning. The Tenant further advised that her employment requires internet access, and the internet interruption was disruptive to her employment. The Tenant acknowledges that the Landlord deducted \$50.00 from her rent in June 2021 due to the internet disruption.

As mentioned, the Landlord issued a Two-Month Notice to End Tenancy signed June 22, 2021 stating that Landlord or their spouse intended to occupy the rental unit. The Tenant initially disputed the Notice to End Tenancy on the basis that she believed the Landlord was not acting in good faith. I understand a level of interpersonal conflict resulted such that the Tenant decided to accept the end of the tenancy, advising the Landlord of the same on via text message on July 30, 2021. The Tenant submitted at the hearing that in the text message of July 30, 2021, she said she would be moving out on August 31, 2021 and that she would withhold paying rent in August 2021 as per her understanding of s. 51(1) of the *Act*.

The Tenant indicated that the Landlord then issued a 10-Day Notice to End Tenancy due to her not paying rent on August 1, 2021. The Tenant acknowledged having received the second notice August 5, 2021.

On August 4, 2021, the Tenant provided the Landlord with a copy of her forwarding address in anticipation of her moving out on August 31, 2021. The Tenant advised having moved out of the rental unit on August 27, 2021 and, after cleaning the rental unit, advised the Landlord that she was able to conduct a move-out inspection on August 30, 2021. The Landlord declined on that occasion. Further, the Tenant on August 31, 2021, when dropping off her keys, asked if she and the Landlord could do the move-out inspection on that occasion. Again, the Landlord declined.

No move-out inspection occurred.

The Tenant advised that she had set a notification for 3-bedroom rental opportunities on Facebook marketplace and was notified in September of a rental unit advertised by the Landlord. Screenshots of the advertisement were submitted into evidence. The advertisement is managed by the Landlord. The description indicates that the rental unit is a three-bedroom basement suite and was available to rent on October 1, 2021. It does not include the precise address of the rental, however, does indicate the nearest

intersection, which is near to the rental unit address. There are images in the advertisement which the Tenant says are images of her former rental unit.

On October 2, 2021, the Tenant indicated attending the residential property to pick-up some mail. When attending the property, she indicates having seen individuals moving into the rental unit. The Tenant further spoke with the new occupants and provides audio recordings of the conversation confirming new occupants moved in on October 1, 2021.

The Tenant further indicates that she spoke with the Landlord on October 2, 2021 asking about the return of the security deposit. According to the Tenant, the Landlord advised her that she would not be returning her security deposit because the Tenant had failed to pay rent in August.

### Analysis

The Tenant applies for compensation equivalent to 12 months rent, return of double her security deposit, and compensation for loss of internet services to be provided as per the tenancy agreement.

Section 51(2) of the *Act* provides that a Tenant is entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement where a landlord cannot establish that:

- the purpose stated in the notice to end tenancy issued under s. 49 was accomplished within a reasonable period after the notice's effective date; and
- the rental unit was used for the stated purpose for at least 6 months.

Policy Guideline 2A further clarifies that it is the Landlord's onus to prove they accomplished the stated purpose and did so for at least 6 months. The Landlord here did not attend the hearing and has failed to show they met requirements of s. 51(2) that would disentitle the Tenant of compensation equivalent to 12 months rent.

Further, I find that evidence provided by the Tenant compelling. The advertisement clearly sets out that the Landlord re-rented the basement suite for October 1, 2021. The Tenant's affirmed evidence was that the photographs were of the rental unit. Indeed, the Tenant indicates that she spoke with the new occupants on October 1, 2021. The Two-Month Notice to End Tenancy indicates the Landlord or the Landlord's spouse was to occupy the rental unit. By all the evidence included with the Tenant's amendment, I find

that the Landlord re-rented the rental unit to other occupants on October 1, 2021 and failed to fulfill the purpose as stated within the notice.

Further, the timeline would indicate that the tenancy ended pursuant to the Two-Month Notice to End Tenancy and not the 10-Day Notice to End Tenancy. The Tenant's affirmed testimony was that she notified the Landlord on July 30, 2021 that she would be moving out on August 31, 2021 and would withhold rent for August. August 31, 2021 is the correct effective date for the Two-Month Notice to End Tenancy after it is automatically corrected by s. 53 of the *Act*.

The Tenant was correct to insist that, pursuant to the Two-Month Notice to End Tenancy, she was entitled to one-month's rent in accordance with s. 51(1). Further, s. 51(1.1) provides that a tenant may withhold the last month's rent and that amount is deemed to have been paid by the Landlord. In short, the Tenant was within her rights under the *Act* to withhold rent in August.

The Tenant advised having paid rent prior to August 2021. Accordingly, the 10-Day Notice to End Tenancy was not properly issued and its effective date, which could have expired before the one in the Two-Month Notice to End Tenancy, was invalid.

Given the above, the Tenant is entitled to compensation equivalent to 12 months her monthly rent under the tenancy agreement. In the circumstances, this totals \$19,800.00 (\$1,650.00 x 12).

The Tenant also seeks that the Landlord pay her double her security deposit of \$800.00. Pursuant to s. 38 of the *Act*, a landlord must pay the tenant double the amount of the security deposit if they fail to return or make a claim against the security deposit within 15-days of the tenancy ending and receiving the tenant's forwarding address.

The Tenant submitted a document dated August 4, 2021 showing her forwarding address. The Tenant further vacated the rental unit on August 31, 2021. Based on s. 38(1), the Landlord must have either returned the security deposit or filed an application to claim against the deposit. The Landlord did neither. Indeed, the Tenant indicates that on October 2, 2021, the Landlord would not return the security deposit because the Tenant had failed to pay rent in August 2021. Even if the Tenant were not entitled to withhold rent for August, which she was, that consideration is not relevant to the procedure set out under s. 38(1). Accordingly, the Tenant is entitled to doubling of her security deposit, which in this case is \$1,600.00.

The final aspect of the Tenant's claim is compensation for loss of internet services. In the Tenant's submissions, she argues for \$100.00 compensation in addition to the \$50.00 reduction in her rent for June 2021. I accept the tenancy agreement provides that internet was included in rent and the hardship the Tenant and her family went through due to its interruption. However, the interruption brought about by the Landlord taking possession on May 15, 2021 was not wilful on the part of the Landlord and was quickly corrected on June 2, 2021. Further, the Landlord deducted \$50.00 from the Tenant's rent for June 2021. I decline to make an order for additional compensation and accept that the deduction of \$50.00 for rent in June is appropriate compensation to the Tenant for the loss internet services from May 15, 2021 to June 2, 2021.

### Conclusion

Pursuant to s. 51(2), I order that the Landlord pay compensation to Tenant equivalent to 12 times the monthly rent set out under the tenancy agreement. I further order that the Landlord pay double the security deposit to the Tenant pursuant to s. 38(6).

I dismiss the Tenant's application for compensation for loss of internet service without leave to reapply.

As the Tenant has been successful in her application, I order that the Landlord pay her filing fee of \$100.00 pursuant to s. 72.

The Landlord shall pay the following amounts to the Tenant:

ITEM	AMOUNT
Compensation pursuant to s. 51(2) \$1,650.00 x 12	\$19,800.00
Doubling of security deposit pursuant to s. 38(6) \$800.00 x 2	\$1,600.00
Tenant's filing fee pursuant to s. 72	\$100.00
<b>TOTAL</b>	<b>\$21,500.00</b>

Pursuant to s. 67, I order the Landlord pay the total amount of **\$21,500.00** to the Tenant.

It is the Tenant's obligation to serve the order on the Landlord. If the Landlord does not comply with the monetary portion of this order, it may be filed by the Tenant with 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 25, 2021

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Residential Tenancy Branch