



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

On May 31, 2021, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement and for the return of a security deposit and/ or pet damage deposit.

The matter was scheduled as a teleconference hearing. The Tenant and the Landlords attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the Tenant entitled to the return of double the security deposit?

### Background and Evidence

The Landlords and Tenant testified that the tenancy began in October 2017 and was on a month-to-month basis. The Landlord and Tenant testified that rent in the amount of

\$2,288.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlords a security deposit of \$1,100.00. The tenancy ended on June 30, 2020 after the Tenant received a notice to end tenancy from the Landlords.

Money Owed or Compensation for Damage or Loss Under the Act

The Tenant is seeking compensation in the amount of \$27,456.00 which is twelve months of rent paid under the tenancy agreement.

The Landlord issued the Tenant a Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit dated January 17, 2020 ("the Four Month Notice"). The Tenant provided a copy of the Four Month Notice. The reason cited for ending the tenancy within the Four Month Notice is blank. The Landlord did not select a reason.

In the Notice the Landlord wrote that he will be painting the entire interior, updating the kitchen, and updating both bathrooms. The Landlord writes: *"The unit has to be updated to put it on the market for sale"*. The Landlord selected that no permits and approvals are required by law to do this work.

The Tenant accepted the Four Month Notice as described above and received compensation of one months rent (\$2,288.00) and moved out of the rental unit. The Tenant stated the Landlord did not follow through with making extensive renovations. The Tenant is seeking compensation as she submits that the Landlord failed to accomplish the purpose of the Four Month Notice.

The Tenant writes:

*"In any event to sum it all up, the McKenzies' were obligated by good faith to abide by the Residential Tenancy Act and Regulations which they failed to do. I was manipulated from the start, first they wanted me to sign a Mutual Agreement to End Tenancy, which I declined. Only then was I told they were planning a remodel, the only legal requirement for eviction available, so immediately I asked to receive the 4 month Notice to End Tenancy quickly, in the hopes that it would make it easier to find housing before eviction. The McKenzie's had no intention of making the updates."*

In reply, the Landlord stated that the Tenant did not dispute the Four Month Notice. He stated that he is not clear on what his obligations were. He stated that it was their intention to sell the home and that he tried to get the Tenant to sign a mutual agreement

to end tenancy. The Landlord stated that the Tenant insisted that they issue her a notice to end tenancy, so he issued the eviction notice as requested. The Landlord stated that it would have been impossible for the Landlord to have sold the unit with her living in it because she had so much stuff. The Landlord stated that they painted the rental unit and changed some light fixtures, and plumbing fixtures. The Landlord sold the rental unit about two weeks after the Tenant moved out.

### Security Deposit

The Tenant testified that she provided her forwarding address to the Landlords in mid July 2020 and late August 2020. The Tenant stated that she sent the mail addressed to the Landlords at the dispute address. The Tenant indicated that her documentary evidence shows that registered mail sent to the Landlords was delivered on July 22, 2020.

The Tenant testified that there was no written agreement permitting the Landlord to keep any amount of the security deposit. The Tenant stated that the Landlord did not make a claim against the deposit and the Landlord has not returned any amount of the security deposit to her.

In reply, the Landlord testified that they did not receive the Tenant's forwarding address in July 2020. The Landlord testified that he received the Tenant's forwarding address when they were served with the notice of dispute resolution proceeding in June/ July 2021. The Landlord confirmed that there was no agreement permitting the Landlord to keep any amount of the deposit and that they have not returned the deposit to the Tenant and are holding the \$1,100.00. The Landlord stated that the rental unit was left in horrible condition and they did not return the deposit because the rental unit was left dirty.

### Analysis

At the time the Four Month Notice was issued, section 49(6) of the Act provided that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in manner that requires the rental unit to be vacant. This section of the Act was changed in January 2021 and the Act no longer permits a landlord to issue a tenant a Four Month Notice for the purpose of renovation or repair. A landlord who wants to end a tenancy for renovation or repair must now apply for dispute resolution and satisfy an arbitrator that vacant possession is required.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

Section 51(2) of the Act provides:

*Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

*(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

*(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

*(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

*(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

Policy Guideline #50 also provides direction on what is a reasonable amount of time for Landlord to do what they planned. The Guideline provides the following:

*A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.*

Based on the above, the evidence and testimony from the parties, and on a balance of probabilities, I find as follows:

Compensation for Breach of Section 51

I find that the Four Month Notice issued by the Landlord was defective because the Landlord did not cite the ground for ending the tenancy. The Landlord writes that he will be painting the entire interior, updating the kitchen, and updating both bathrooms. The Landlord further communicates his intentions by writing: "The unit has to be updated to put it on the market for sale".

While it is too late to dispute the Four Month Notice; if it had been disputed, I find that it is more likely than not that the Four Month Notice would have been cancelled by an Arbitrator. The Landlord would have needed to prove that extensive renovations or repairs were planned which required the rental unit to be empty.

Despite my finding that the Four Month Notice is defective, the Tenant accepted the Notice and compensation, and vacated the rental unit on June 30, 2020; accepting that the Landlord will be painting the entire interior, updating the kitchen, and updating both bathrooms with the intention of selling the rental unit.

The Tenant was either aware or should have been aware that the Landlord failed to select a reason for ending the tenancy in the Four Month Notice. I find that both parties relied on the Four Month Notice as being valid at the time it was served by the Landlord and accepted by the Tenant.

I find that the Landlords' intentions were made clear to the Tenant. The Landlords wanted to update the rental unit and sell it. The Landlords never cited that they are going to perform renovations or repairs that are so extensive that the rental unit must be vacant.

Section 51(2) of the Act provides that the Landlord must pay the Tenant compensation if the stated purpose is not accomplished within a reasonable period after the effective date of the notice.

I accept the Landlords' testimony that they painted the rental unit and updated the unit by changing light fixtures and plumbing fixtures. I accept the testimony before me that the rental unit was then sold, two weeks after the Tenant vacated.

I find that the Landlord took steps within a reasonable period of time to accomplish the work as stated within the Four Month Notice. I find that it would not be reasonable for me to require the Landlord to make renovations or repairs so extensive that the rental unit must be vacant, since that was not the reason cited by the Landlords within the Four Month Notice.

The Tenant's claim for compensation based on the Landlords' failure to perform extensive renovations is dismissed without leave to reapply.

### Security Deposit

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security deposit or pet damage deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Landlord sold the rental unit around July 14, 2020, approximately two weeks after the Tenant moved out. While I accept the Tenant's testimony that in mid July 2020, she sent her forwarding address in writing to the Landlords at the rental unit, I find that the Landlord was not living at the rental unit, and the rental unit had been sold by July 15, 2020. I find that it is not reasonable to find that the Landlords are deemed to have received the Tenant's forwarding address in July 2020.

I find that the Landlords received the Tenant's forwarding address in June 2021 when the Tenant served them with the Notice of Dispute Resolution Proceeding documents. Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits. I find that the Landlords now have the Tenant's address as provided within her application. The Landlord are hereby notified that the date of this Decision is the ordered date that the Landlords' received the Tenant's forwarding address. The Landlords must now deal with the security deposit in accordance with section 38 of the Act.

The Tenant's claim for the return of a security deposit is dismissed with leave to reapply if the Landlord does not claim against the security deposit or return the security deposit in full within 15 days of the date of this decision.

Since the Tenant's application is not successful, I decline to order the Landlords to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

### Conclusion

I find that both parties relied on a notice to end tenancy that was defective. I find that the Landlords took steps within a reasonable period of time to accomplish the work as stated within the Four Month Notice. I find that it would not be reasonable for me to require the Landlord to make renovations or repairs so extensive that the rental unit must be vacant, since that was not the reason cited by the Landlords within the Four Month Notice.

The Tenant's claim for compensation from the Landlords based on their failure to perform extensive renovations to the rental unit is dismissed without leave to reapply.

The Tenant's claim for the return of a security deposit is dismissed with leave to reapply if the Landlord does not claim against the security deposit or return the security deposit in full within 15 days of the date of this decision.

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 21, 2021

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Residential Tenancy Branch