



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT, MNSD, MNETC, FFT

### **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 their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for monetary loss or money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to the return of the remaining portion of their security deposit?

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2014, and ended on February 28, 2021 after the tenant was served with a 2 Month Notice to End Tenancy on December 23, 2020 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Monthly rent was set at \$2,432.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$1,050.00, and a pet damage deposit in the amount of \$800.00. Both parties confirmed that the tenant had provided the landlords with a forwarding address when they had moved out. The landlord returned to the tenant \$1,393.44 on March 12, 2021, stating that they had the tenant's permission to retain the rest.

The tenant applied for the return of the remaining portion of their security deposit, plus compensation for the landlord's failure to comply with the Act by selling the home instead of occupying it. The tenant testified that the landlords did not serve the tenant with the 2 Month Notice in good faith, and had plans to sell the home when the tenant was served with the 2 Month Notice.

The landlords do not dispute that they had sold the home, but testified that they had fulfilled the requirement to occupy the home for at least 6 months. The landlords testified that they had moved in on March 1, 2021, and resided there until October 1, 2021. The landlords do not dispute that they had listed the home for sale on July 5, 2021, which was then subsequently sold on July 9, 2021 with a completion date of October 1, 2021.

The landlords provided a copy of the Contract of Purchase and Sale, as well as other documents such as receipts, utility bills, and emails to support that they had moved into the property for the minimum length of time. The landlords also provided a sequence of emails to show that the tenant had agreed for the landlords to deduct from the deposit the cost of the repairing the door trims and the gate.

The tenant questioned why the utility bills showed declining usage, and questioned whether the landlords did in fact occupy the home as long as they had claimed.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In consideration of the evidence before me I find that that the landlords had provided evidence to show that the landlords' property manager did communicate with the tenant about the damage claims by the landlords. I find that the evidence does show that the property manager provided an itemized list of these items with associated costs, and the tenant had stated that they agreed to take responsibility for the door trims and gate. I find that the tenant had provided permission for the landlord to with hold these amounts, which they did, and the landlords had returned the rest. Accordingly, I dismiss the tenant's monetary claim for the return of the remainder of their deposit.

The tenant applied for compensation relating to a tenancy that had ended after the tenant was issued a 2 Month Notice to End Tenancy under section 49 of the *Act*.

A tenant may be entitled to compensation under section 51 of the *Act* as stated below if an Arbitrator finds that the landlord failed to comply with the *Act* as stated below:

### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) 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.

I find it undisputed that the landlords did in fact list the home for sale, and the home was subsequently sold. As noted above, the requirement is that the landlords must use the rental unit for the stated purpose for at least 6 month's duration after the effective date of the 2 Month Notice. In this case I am satisfied that the landlords had provided sufficient evidence to show that they had met this minimum requirement.

Although the tenant disputes the validity of the documents, noting that the amount of the utilities seemed unusually low, I do not find that the tenant has established what amount of utility usage is required to support that a home is indeed occupied. In light of the other evidence provided by the landlords, such as receipts and invoices, I do not find the tenant's suspicions are sufficient to demonstrate that the level of usage is abnormal for an occupied home.

The tenant feels that the landlords failed to meet the Good Faith requirement when the tenant was served with the 2 Month Notice on December 23, 2020. Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(8) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, a tenant may dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch within 15 days. This process allows the tenant to call into question the good faith intent of the landlords, which then places the burden on the landlords to establish their true intentions before an Arbitrator at a hearing.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy."*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."*

Unfortunately in this case the tenant had accepted the 2 Month Notice by moving out on the effective date. The 2 Month Notice is no longer in force or effect, and can no longer be disputed by the tenant.

The dispute process available to the tenant after the tenant has moved out is set out in section 51, which is the compensation that is available to the tenant if the landlords fail to use the home as intended for the required period. In this case, I find that the landlords had met the burden of proof to demonstrate that they had occupied the home for the minimum required period. Accordingly, the tenant's application for compensation under section 51 is dismissed without leave to reapply.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenant's application to recover the filing fee.

### **Conclusion**

The tenant's entire application is dismissed without leave to reapply.

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: February 14, 2022

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Residential Tenancy Branch