



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$1677.74t.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on January 15, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on January 15, 2013, end one later and then become month to month. The rent was \$1500 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy.

On December 3, 2014 the landlord served a 2 month Notice to End Tenancy for landlord use of the rental property. On January 1, 2015 the tenants gave the landlord a 10 day Notice that they would be vacating on January 11, 2015. The tenancy ended on January 11, 2015.

The tenant(s) provided the landlord with his/her their forwarding address in writing on October 31, 2015.

### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

The tenants paid a security deposit of \$750 at the start of the tenancy. The tenant testified she has agreed the landlord could retain \$40 of that sum to pay for the cost of a door screen leaving a balance of \$710. I determined the tenancy ended on January 11, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on October 31, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing.

Policy Guideline #17 includes the following:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit<sup>15</sup>:
  - if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

The Application for Dispute Resolution does not ask for the return of double the security deposit. I asked the Tenant if she was waiving her right to the doubling of the security deposit. She testified she was not aware of this and that she did not want to waive this right. As a result I determined the tenants have established a claim against the landlord for double the security deposit held by the landlord after the tenants agreed the landlord could deduct \$40 or the sum of \$1420 ( $\$710 \times 2 = \$1420$ )..

Section 50 and 51 of the Residential Tenancy Act

**Tenant may end tenancy early following notice under certain sections**

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

**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.

The landlord served a 2 month Notice to End Tenancy on the Tenants in early December 2014. On January 1, 2015 the Tenants gave the landlord a 10 day Notice under section 50 ending the tenancy on January 11, 2015. The tenants are entitled to the equivalent of one month rent under section 51 less the 10 days of rent for the period January 1, 2015 to January 11, 2015 or the total of \$967.74.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2387.74 plus the sum of \$100 in respect of the filing fee for a total of \$2487.74.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$2487.74.

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: August 15, 2016

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Residential Tenancy Branch