



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit, and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The tenant also provided evidentiary material in advance of the hearing.

The parties were explained how the hearing would be conducted, hearing from one party at a time, however, during the course of the hearing, the parties were warned several times to not interrupt. The landlord accused the Branch of siding with tenants, and both parties indicated they had evidence that had not been provided to the Residential Tenancy Branch or to each other prior to the hearing. Only the evidence provided by the tenant prior to the hearing is considered in this Decision, pursuant to the Rules of Procedure. The landlord has not provided any evidentiary material, and no issues were raised by either party with respect to service or delivery of documents or evidence.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation required after giving a 2 Month Notice to End Tenancy for Landlord's Use of Property?

### Background and Evidence

**The tenant** testified that this tenancy began on June 1, 2009 for rent in the amount of \$500.00 per month. The parties entered into another tenancy agreement for a month-to-month tenancy at \$600.00 per month commencing July 1, 2015, and there are no

rental arrears. At the outset of the tenancy in 2009 the landlord collected a security deposit from the tenant in the amount of \$250.00, and no pet damage deposit was collected. The rental unit is an in-law suite in a house, and the landlord and family reside in the same house. A copy of each of the tenancy agreements have been provided.

The tenant further testified that the landlord told the tenant on January 5, 2016 that she needed the rental unit for her ill mother. The tenant agreed, but is on disability and required it in writing for his rent to continue to be subsidized. The landlord was under the impression that she had to give the tenant 3 months notice, but the tenant told her that only 2 months notice was required. The tenant prepared a 2 Month Notice to End Tenancy for Landlord's Use of Property and took it to the landlord. The landlord signed it, and a copy has been provided. It is dated January 31, 2016 and contains an effective date of vacancy of March 31, 2016. The reason for issuing it states: 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.

The tenant further testified that on February 18, 2016 the tenant gave the landlord notice that he was moving out on March 1, 2016 at noon, by personally handing it to the landlord's adult daughter with the landlord's husband present. The notice also contained the tenant's forwarding address. The tenant moved out on March 1, 2016, however the landlord has not returned any portion of the security deposit and the tenant claims double.

The tenant also testified that rent was paid in full for January and February, 2016, and the tenant claims compensation for the landlord using the rental unit for the landlord's purpose.

The tenant has also provided a Monetary Order Worksheet setting out the following claims:

- \$20.00 for thermostat replacement;
- \$40.00 for the kitchen/bathroom sinks leaking;
- \$40.00 for re-anchoring the kitchen top assembly.

The tenant testified that he made these repairs, however no receipts have been provided. When they were reported to the landlord, the landlord responded that they were normal wear and tear. The tenant testified that no move-in condition inspection report was completed by the parties. The tenant attempted on 3 occasions to have it completed with the landlord, but the landlord never had time. No move-out condition inspection report was completed at the end of the tenancy.

The tenant claims double the \$250.00 security deposit, the equivalent of 1 months rent, and \$100.00 for the repairs.

**The landlord** testified that she gave the notice to end the tenancy to the tenant as she was permitted to do.

The landlord further testified that she called the tenant twice to arrange the move-out condition inspection, but was not successful in arranging it. The tenant left the rental unit dirty, the stove was not clean, and there were spider webs everywhere. The landlord paid her son \$200.00 to clean it after the tenant vacated. The tenant also left the unit with the fridge/freezer and oven not working, but the landlord did not make an application for dispute resolution claiming against the security deposit.

The landlord also denies that the tenant moved out on March 1, 2016 and testified that he actually moved out March 31, 2016. The landlord testified that she received the tenant's forwarding address in April, 2016, not in March as testified by the tenant.

### Analysis

Whether or not the tenant left the rental unit reasonably clean and undamaged, a landlord is required to return a security deposit in full to a tenant or make an application for dispute resolution claiming against the deposit. The law says that the time limit for doing one or the other is 15 days from the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord does neither within that 15 day period, the landlord must repay the tenant double the amount of the security deposit.

The tenant testified that he moved out on March 1, 2016 and gave the landlord's daughter a forwarding address in writing on February 18, 2016. The landlord testified that the tenant moved out at the end of March, 2016 and the landlord received the tenant's forwarding address in writing in April, 2016. I prefer the testimony of the tenant because the Tenant's Application for Dispute Resolution was filed with the Residential Tenancy Branch on March 17, 2016, and would have no claim against the security deposit until after he moved out. Therefore, I find that the tenancy ended on March 1, 2016 and the landlord received the tenant's forwarding address in writing on February 18, 2016. The landlord did not return the security deposit within 15 days of March 1, 2016, and did not make an application for dispute resolution claiming against the security deposit, and therefore, I find that the tenant is entitled to double, or \$500.00.

The *Residential Tenancy Act* also states that where a landlord gives a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord must also provide the tenant with the equivalent of one month's rent as compensation. This is usually accomplished by not charging any rent for the last month of the tenancy. However, in this case, the tenant gave notice to move out early having already paid the rent for

February, and the landlord is still required under the *Act* to provide the compensation to the tenant by law. Therefore, I find that the tenant has established a claim for \$600.00.

With respect to the repairs and claims set out in the tenant's Monetary Order Worksheet, the *Act* permits a tenant to make emergency repairs for health or safety reasons and claim the receipted amounts from the landlord. The landlord may take over emergency repairs at any time. The *Act* also specifies what emergency repairs are, but does not permit a tenant to complete repairs that are not defined as emergency repairs and claim the amounts from the landlord. I am not satisfied that any of the repairs set out in the tenant's Monetary Order Worksheet qualify as emergency repairs. Therefore, the tenant's application for \$100.00 for repairs is dismissed.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,100.00.

This order is final and binding and may be enforced.

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 18, 2016

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Residential Tenancy Branch