



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MSD, MNDC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed June 14, 2016 wherein the Tenant sought monetary compensation from the Landlords for recovery of rent paid as well as return of the balance of her security deposit and recovery of the filing fee.

Only the Tenant called into the hearing. She testified that she personally served the male Landlord, J.B., on June 16, 2016. She further stated that this service was witnessed by her friend, L.H. The Tenant stated that the female Landlord, J.B., was also present but refused to come to the door.

Section 89 of the *Residential Tenancy Act* provides for service of an Application for Dispute Resolution. Pursuant to this section, I find that J.B. was served in accordance with the *Residential Tenancy Act*, and I proceeded in his absence. As well, any Orders made are enforceable against the male Landlord J.B. only there was no evidence that the female Landlord, J.B. was served in accordance with the *Act*.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord, J.B.?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The Tenant testified that she received a 2 Month Notice to End Tenancy for Landlords' Use. A copy of the Notice was introduced in evidence and which indicated the Notice was issued on March 6, 2016. Notably, the Landlords failed to indicate the reason on the second page.

The Tenant sent the Landlords a Notice to End Tenancy on May 16, 2016 pursuant to section 50(1)(a) of the Act. This Notice was effective May 26, 2016 such that the Tenant sought recovery of the five additional days of rent from May 26-31, 2016.

The Tenant testified that her monthly rent is \$950.00. As her monthly rent is \$950.00, she seeks the sum of \$153.25 representing five days at \$30.65 per day.

The Tenant further testified that she paid a security deposit in the amount of \$475.00. She confirmed that she did not agree to the Landlord retaining any portion of her security deposit, yet the Landlord only returned \$450.00.

The Tenant also seeks recovery of the \$100.00 filing fee.

### Analysis

The Tenant seeks compensation representing the return of five days of rent paid in May of 2016 pursuant to section 50(2) of the *Residential Tenancy Act*, which reads as follows:

- 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.

The Tenant gave the Landlords 10 days notice pursuant to section 50(1)(a) and accordingly, I find the Tenant is entitled to the amount claimed for the five days in May she had already paid for, pursuant to section 50(1)(b). As such, I award her the sum of **\$153.25**.

The Tenant also seeks return of her security deposit. She testified that the Landlords returned the sum of \$450.00 to her following the end of the tenancy and retained \$25.00 without the Tenant's consent.

Section 38 of the *Residential Tenancy Act* provides as follows:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain *any portion* of the security deposit. Similarly, there was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the Tenant's security deposit.

The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenant, they *must* either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord *must* pay the Tenant double the amount of the security deposit.

In the case before me, the Landlords returned a portion of the Tenant's security deposit. *Residential Tenancy Policy Guideline 17—Security Deposit and Set Off* provides the following example to illustrate how the doubling is to take effect.

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is  $\$525.00$  ( $\$800 - \$275 = \$525$ ).

Applying the above, I find that the Tenant is entitled to compensation in the amount of \$500.00 calculated as follows:

$$\begin{aligned}
 & \$475.00 \text{ (original security deposit)} \times 2 = \$950.00 \\
 & - \$450.00 \text{ (amount of security deposit returned to Tenant)} \\
 & = \$500.00 \text{ owing to Tenant.}
 \end{aligned}$$

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the male Landlord, J.B. pay the Tenant the sum of **\$753.25**, comprised as follows:

2 x the security deposit: \$475.00 x 2	\$950.00
<i>Less the amount paid to the Tenant</i>	<i>\$450.00</i>
+ the prorated return of the amount the Tenant paid for rent in May 2016	\$153.25
+Recovery of the filing fee	\$100.00
<b>TOTAL</b>	<b>\$753.25</b>

### Conclusion

The Tenant is given a formal Monetary Order in the amount of **\$753.25** pursuant to sections 38, 50(2), 67 and 72. The Tenant must serve the Order on the male Landlord, J.B. as soon as possible. Should the male Landlord, J.B. 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.

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, 2016

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Residential Tenancy Branch