



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNSD MNDC FF

### **Introduction**

This hearing was convened in response to an application by the tenant filed November 25, 2016 pursuant to the *Residential Tenancy Act* (the Act) for a Monetary Order for the return of their security deposit and compensation pursuant to Section 51(1) and 51(2) of the Act. The application was successfully amended May 10, 2017 to include recovery of the filing fee.

The tenant participated in the conference call hearing and the landlord did not. The tenant testified they served the landlord with the application for dispute resolution and Notice of Hearing by registered mail. The tenant provided supporting evidence indicating the mail was received by the landlord on November 30, 2016. I found that the landlord was served as prescribed by Section 89 of the Act with notice of the claim against them. The hearing proceeded with the tenant given opportunity to be heard, to present evidence and to make submissions.

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenant acknowledged generally filing their application prematurely. None the less, the tenant's undisputed evidence is as follows. The tenancy started in February 2015. The payable monthly rent was \$1550.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a \$775.00 security deposit at the outset of the tenancy. In the latter part of the tenancy a new owner of the rental unit assumed the role of landlord.

On October 30, 2016 the new landlord personally gave the tenant a 2 Month Notice to end tenancy for landlord's use with an effective date of December 31, 2016, for the reason prescribed by **Section 49(3)** of the Act. The tenancy then ended on November 13, 2016 pursuant to a 10 Day Notice to End given by the tenant in accordance with

Section 50 of the Act. On the last day of the tenancy of November 13, 2016 the parties conducted a mutual condition inspection of the rental unit and the tenant personally gave the landlord a letter stating the forwarding address for the return of their security deposit. The tenant claims the landlord told them to retrieve their security deposit from the previous owner, whom purportedly had not given them the tenant's security deposit. The tenant testified that the landlord also informed them they were not fully aware as to requirements for ending a tenancy, or about compensation due the tenant pursuant to giving them a 2 Month Notice to End tenancy for landlord's use. The tenant testified that ultimately they did not receive compensation pursuant to Section 51(1) of the Act.

The tenant provided evidence that 3 days after receiving the 2 Month Notice from the landlord they discovered an on-line advertisement for the rental unit house on Craigslist. On notifying the landlord's realtor the advertisement was taken off the website 2 days later. The tenant provided evidence that the day after they vacated on November 13, 2016 they found another online advertisement for the rental unit house on Craigslist on November 14, 2016, which was updated November 23, 2016. The tenant testified that thereafter they found an online advertisement 4 months later in March 2017, however for solely the downstairs portion of the rental unit house. The tenant testified that they do not have specific or direct knowledge of whom actually occupied the rental unit house after the effective date of the 2 Month Notice (December 31, 2016), or whom now occupies the upper portion of the rental unit house if the downstairs portion successfully rented in March 2017.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

**Section 38(1)** of the Act provides that the landlord must return the deposits of the tenancy or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlords received the tenant's forwarding address in writing on November 13, 2016 on the same day the tenant vacated. I find the landlords failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. As a result, the Act prescribes that pursuant to **Section 38(6)** the landlords must pay the tenant *double* the amount of the security deposit and pet damage deposit as applicable.

The *newly* referenced landlord currently holds, or ought to hold the tenant's security deposit in trust in the amount of \$775.00 and I find that they are obligated under

**Section 38** to return *double* this amount. Therefore, I award the tenant **\$1550.00** in this regard.

**Section 51(1)** of the Act states that 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, despite the provisions utilized pursuant to Section 50 of the Act. I find the landlord has not compensated the tenant in this regard and therefore I grant the tenant the prescribed amount in compensation equivalent to the payable rent under the agreement, of **\$1550.00**.

I find the tenant has not provided sufficient evidence proving the landlord has not accomplished the stated purpose for ending the tenancy under Section 49(3) within a reasonable period after the effective date of the notice. I find it is premature to ascertain the use of the rental unit pursuant to the remainder of Section 51(2). As a result I **dismiss** this portion of the tenant's claim.

As the landlord was sufficiently successful in their application I further grant the tenant their filing fee of \$100.00 for a sum award of **\$3200.00**.

I **grant** the tenant a Monetary Order under Section 67 of the Act for **\$3200.00**. If necessary this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

### **Conclusion**

The tenant's application in relevant part is granted.

**This Decision is final and binding.**

*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: May 31, 2017

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Residential Tenancy Branch