



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC MNSD FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

### Issues

Is the tenant entitled to compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51?

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

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

### Background and Evidence

The tenancy began on March 5, 2019 and ended on February 28, 2021. The monthly rent as per the tenancy agreement was \$1500.00 but it appears the parties had an agreement the tenant could pay \$1450.00 if the rent was paid on time. The security deposit amount as per the tenancy agreement was \$750.00. The landlord testified that

the tenant only paid \$700.00 at the beginning of the tenancy. The tenant disputed this and was adamant that \$750.00 was paid. The landlord submitted a "rent history" spreadsheet which shows the tenant originally paid \$350.00 on February 25, 2019 and then \$1800.00 on March 4, 2019. It was not clear which portion of these payments were for rent or for the security deposit. The tenant also made varying amounts of rent payments throughout the tenancy. For the sake of simplicity, the landlord agreed in the hearing that the security deposit paid was \$750.00. The landlord continues to retain this amount.

On January 30, 2021, the landlord served the tenant with a letter titled "Notice to quit". The letter states the landlord will be selling the property and hereby ending the lease. The letter provided the tenant with 30 days notice and required the tenant to vacate on February 28, 2021. The letter is dated and included the address of the rental unit but is not signed by the landlord.

The tenant is claiming an amount equivalent to twelve times the monthly rent as compensation for the landlord issuing an illegal Notice to End Tenancy. The tenant's representative submits that the tenant was caused to vacate as the intent and message in the Notice was clear even though the Notice was not in compliance with the Act. The tenant's representative submits that the landlord sold the property 3 months after the tenant vacated.

The landlord argues that it was the tenant that first approached him and stated that he wanted to end the tenancy. The landlord testified that this occurred while the parties were involved in a dispute relating to non-payment of rent earlier in the year. The landlord submits that was the reason for him serving the Notice to Quit letter to the tenant.

The tenant is also claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant provided a letter dated February 28, 2021, as proof of providing of a forwarding address to the landlord. The landlord acknowledged receipt of this letter. The landlord acknowledged the security deposit has not been returned.

## Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving a notice to end tenancy. Section 49(7) requires that a notice must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states as follows: **(emphasis for ease)**

### **Form and content of notice to end tenancy**

#### **52 In order to be effective, a notice to end a tenancy must be in writing and must**

- (a) **be signed** and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

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.

Further, Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

I find that the "Notice to Quit" issued by the landlord does not meet the form and content requirements of Section 52 of the Act; therefore, it was not a valid notice to end tenancy as per section 49 of the Act. I find that the 12 times monthly rent penalty provisions under section 51(2) of the Act only apply in cases where a tenant receives a Notice to

End Tenancy under section 49 of the Act which is in compliance with the form and content provisions of section 52.

I note that pursuant to Section 68(1) of the Act, if a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that:

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find that this provision specifically speaks to information that was omitted from the Notice. Accordingly, I find this provision only allows the Director to amend a notice in the approved form to include omitted information that should have been known to the person receiving it. This provision does not state that the Director may accept or otherwise amend a Notice that is not in the approved form.

The portion of the tenant's application is dismissed without leave to reapply.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenant provided a forwarding address in writing to the landlord. The tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. The landlord did not have written authorization to retain the security deposit or file an application to claim against the deposit within fifteen days; therefore, the doubling provisions of section 38 apply.

I allow the tenant's claim for return of the security deposit and award an amount of \$1500.00, which is double the original security deposit of \$750.00.

As the tenant was only partly successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1500.00. Should the landlord fail to comply with this Order, this 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: July 08, 2022

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Residential Tenancy Branch