



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      File 310059034: MNSDS-DR, FFT,  
File 310063354: FFT, MNETC, MNDCT

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for August 16, 2022.

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

- a monetary order for compensation for loss or money owed under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for their applications from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The interim decision dated August 16, 2022 noted the requirements for service of the hearing documents for both parties. The landlord acknowledged receipt of all hearing documents with the exception of the tenant's evidence containing two pictures that were submitted to the RTB on September 8, 2022. The tenant confirmed that they did not serve the landlord with a copy of this late evidence. In accordance with sections 88 and 89 of the Act, I find the landlord duly served with the tenant's applications and evidentiary materials, with the exception of the late evidence. As the two additional documents submitted on September 8, 2022 was not served on the landlord at least 14

days prior to the hearing date as per section 88 of the Act, and in accordance with RTB Rules, these two documents will be excluded for the purposes of this hearing. The tenant confirmed receipt of the landlord's evidentiary materials. In accordance with section 88 of the Act, I find the tenant duly served with the landlord's evidence.

**Issues(s) to be Decided**

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the Act, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for their applications?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on November 1, 2020, and reverted to a month-to-month after October 31, 2021. Monthly rent was set at \$1,400.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$700.00, which the landlord still holds.

The tenant was served with a 2 Month Notice for Landlord's Use on October 18, 2021 with an effective date of January 1, 2022. The tenant testified that they gave 10 day's notice as allowed under the Act to move out before the effective date as they had found new housing in the same building. The tenant filed these applications as the landlord did not return the tenant's security deposit, nor did the landlord provide the tenant with 1 month's compensation for the 2 Month Notice. Both parties confirmed that the tenant paid rent up to October 31, 2021. The tenant also filed an application for compensation as the believe that the landlord never moved into the rental unit.

The landlord does not dispute that they still hold the tenant's security deposit. The landlord also confirmed that the tenant provided a forwarding address. The landlord confirmed in the hearing that on September 8, 2022 they had filed their own application for losses associated with the tenancy. The landlord confirmed that they did not file any applications prior to this, but testified that the tenant had caused damage to the rental unit.

The landlord also does not dispute that they did not provide the tenant with 1 month's compensation. The landlord testified that the tenant did not return the keys until November 11, 2021, and did not pay any rent for the month of November 2021.

The landlord testified that they maintain multiple residences, including their other residence in another province. The landlord testified that they moved into the rental unit in January 2022, which is shortly after the effective date indicated on the 2 Month Notice. The landlord testified that they often travel, and only occupy the suite on a part-time basis. The landlord provided utility bills for the rental unit in their name to show that the unit is occupied by them.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find it undisputed that the landlord had failed to return the tenant's security deposit within 15 days of receipt of the tenant's forwarding address in writing. The tenant provided an RTB Form 47 confirming that the landlord was provided with the tenant's forwarding address on November 8, 2021. The landlord confirmed that they have not filed any applications until September 2022. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of their deposit. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled a return of their security deposit, plus a monetary order in an amount equivalent to the original security deposit.

Section 51 of the *Act* reads in part as follows:

**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.*

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "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." If a tenant elects to exercise this option, the tenant is only responsible for paying to the landlord "the proportion of the rent due to the effective date of the tenant's notice" as per section 50(1)(b) of the *Act*.

Section 51(1.2) of the *Act* states the following: If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

In consideration of the evidence before me, I find it undisputed that the tenant paid rent for the entire month of October 2021, and the landlord did not provide the 1 month's compensation as required by section 51(1) of the *Act*. It is also undisputed that no rent was paid for November 2021.

Although it is disputed as to the exact date that the tenant vacated the rental unit, both parties confirmed that the tenant provided the landlord with 10 Day's Notice to end the tenancy on a date earlier than the effective date on the 2 Month Notice. While the tenant testified that they had vacated the rental unit on November 8, 2021, the landlord testified that they received the keys on November 11, 2021. In light of the disputed facts, I am not satisfied that this tenancy ended before November 11, 2021, the date the landlord was returned the keys. Although I am satisfied that the tenant had ended the tenancy in a manner that complies with section 50(1) of the *Act*, I find that the tenant did not pay the proportion of rent owed for the period of November 1 through to November 11, 2021, which is \$513.33 ( $\$1,400.00/30 \text{ days} * 11$ ). Accordingly, I allow the tenant's application for compensation under section 51 (1) of the *Act*, less the \$513.33 owed for the period of November 1 to 11, 2021. Although the landlord referenced damage to the rental unit, the landlord does not have authority to automatically deduct or withhold compensation for this reason under section 51(1) of the *Act*.

The tenant also requested compensation under section 51(2) of the Act for the landlord's failure to reside in the rental unit.

Section 51(2) of the Act reads in part as follows:

*51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

*(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

*Residential Tenancy Policy Guideline #2A* provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

### ***6-month occupancy requirement***

*The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).*

In this case, I am satisfied that the landlord has provided sufficient evidence in the form of utility bills to support that they had moved into the rental unit in January 2022, which is the effective date of the 2 Month Notice. Although I note that the tenant did give the landlord notice to end the tenancy on an earlier date, the *Act* only requires that the landlord use the rental unit for its intended purpose “*beginning within a reasonable period after the effective date of the notice.*” The landlord does not dispute that they own multiple residences, and is often away on travel.

Although RTB Policy Guideline #2A does require 6 months of occupancy by the landlord, there is no requirement that the landlord must occupy the home full-time, or as their principal residence. I am satisfied that in this case, the evidence supports that the landlord moved into the rental unit within a reasonable amount of time following the effective dated of the 2 Month Notice. I find that the landlord provided a reasonable and credible explanation for why they do not reside in the rental unit on a full-time basis as they own multiple homes, and is often away for travel commitments.

I find that the landlord has fulfilled their obligations under section 51(2) of the *Act*. Accordingly, I dismiss the tenant’s entire application for compensation without leave to reapply

As the tenant was partially successfully with their claims, I allow the tenant to recover half of the filing fees paid for their applications.

### **Conclusion**

I issue a **\$2,386.67** Monetary Order in the tenant’s favour for the landlord’s failure to comply with the provisions of sections 38 and 51 of the *Act*. The tenant is also allowed to recover half of the filing fees paid.

<b>Item</b>	<b>Amount</b>
Return of security deposit	\$700.00
Compensation under section 38 of the <i>Act</i>	700.00
Compensation under section 51(1) of the <i>Act</i>	1,400.00
Less Pro-rated rent owed for November 1-11, 2021	-513.33

Recovery of ½ of the Filing Fees paid	100.00
<b>Total Monetary Order to Tenant</b>	<b>\$ 2,386.67</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

The remainder of the tenant's applications is dismissed without leave to reapply.

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: September 14, 2022

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Residential Tenancy Branch