



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNDC, MNSD, FF

## Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlord for a monetary order. Both parties were represented in the hearing and had opportunity to be heard.

## Issue(s) to be Decided

Are the tenants entitled to the return of rent and their security deposit?

Is the landlord entitled to retain rent paid for March and April?

## Background and Evidence

The tenancy began on February 15, 2007 and ended on March 15, 2009. The landlord holds a \$750.00 security deposit. The parties agreed that on March 5 the tenants gave notice that they were ending the tenancy on March 15. The tenant who represented both tenants at the hearing testified late in 2008 and early in 2009 they became increasingly aware of illegal activity taking place in the building. In January 2009 a storage locker was broken into and the tenants' bicycles were stolen. The tenant testified that he had a conversation with T., the building manager, expressing his desire to move. The tenant testified that T. told him that he would not need to give a full month's notice and that if they moved out mid-month they would receive a rebate for the remainder of the month. The tenants were able to secure other accommodation and gave notice on March 5. The landlord did not refund rent in the month of March and in April an automatic withdrawal of the tenants' rent took place. The tenants submitted copies of emails in which they advised other parties of the representations made to them by T.

The landlord testified that T. was no longer employed by the corporate landlord and had left of her own volition. The landlord testified that he had spoken with T. who denied

having made any representations to the tenants that they did not have to give a full month's notice or that they would receive a rebate if they moved mid-month.

### Analysis

Each party bears the burden of proof with respect to his own application. I find that the tenants have failed to prove that the landlord promised them that they would receive a rebate for the last half of March or that they did not need to give a full month's notice. The emails submitted by the tenants are of little value as they are hearsay. I find that the landlord is entitled to retain all the rent paid for the month of March. However, the landlord bears the burden of proving that reasonable attempts were made to re-rent the unit in the month of April. The landlord did not submit copies of advertisements or other evidence on this point. I find that the landlord has not proven that they acted reasonably to mitigate their losses and I deny the landlord's claim to retain rent received for April.

The landlord currently holds a security deposit and interest of \$771.25. I order that the landlord return the security deposit and interest together with the \$1,560.00 in rent collected for the month of April, less the landlord's \$50.00 filing fee which I find the landlord is entitled to recover. I note that the tenants did not apply to recover their filing fee.

The tenants are awarded \$2,281.25. A formal order is enclosed which may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord may retain rent for the month of March but must return the tenants' security deposit and rent paid for April.

Dated July 15, 2009.

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