



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

These parties have been involved in one prior dispute resolution hearing, which was held on November 18, 2010 (the "First hearing". In the First hearing the Tenant's claim against the Landlord was dismissed.

In this hearing the Landlord testified that she informed the Tenant she would have to vacate the rental unit because her parents were coming to live with her. The Landlord acknowledges she did not use the correct form. The Landlord testified that the Tenant went "ballistic" and began acting strangely after she was informed about having to leave the rental unit. The Landlord then gave the Tenant a Notice to End Tenancy for cause, and apparently used the correct form.

The Landlord testified that the Tenant then left the rental unit on or about October 27, 2010, without giving her notice. The Landlord is claiming for one month of rent in the amount of \$450.00 and to recover the \$50.00 filing fee for the Application. The

Landlord requests to keep the security deposit of \$200.00, paid on or about July 1, 2010.

The Tenant testified that she and the Landlord reached a mutual agreement to end the tenancy. The Tenant testified that this was determined by the Dispute Resolution Officer at the First hearing.

The Tenant also alleges that she had to call the police as the Landlord had assaulted her. She testified that the police would not do anything about the assault as it was a tenancy matter. I note that the allegations of assault by the Tenant were reviewed and dismissed in the First hearing.

The Tenant also claims that the Landlord should be returning double the security to her. She claims the Landlord did not file her Application within 15 days of receiving her forwarding address.

The Tenant testified that she sent the Landlord her forwarding address in the mail on November 3 or 4, 2010.

The Tenant then testified she sent the Landlord her forwarding address prior to the first hearing.

In her written submissions the Tenant writes that the Landlord, "... failed to return my damage deposit fifteen days after I left the rental unit and gave my forwarding address (November 19, 2010)." [Reproduced as written.]

The Landlord testified that she did not recall the exact date she received the Tenant's forwarding address, however, she stated she had the address before the First hearing and applied to keep the deposit on November 19, 2010.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant breached the Act by failing to provide the Landlord with a Notice to End Tenancy. The Tenant was under no obligation to leave the rental unit when the Landlord told her to vacate the rental unit and did not give her the required notice.

I have reviewed the Decision from the First hearing and it contains no finding that this tenancy ended by mutual agreement. Based on the evidence in this hearing, I do not find that this tenancy ended by mutual agreement.

I also find that the evidence of the Tenant regarding when she served the Landlord with her forwarding address in writing was inconsistent. For example, the Tenant initially claimed she mailed the address on November 3<sup>rd</sup> or 4<sup>th</sup>, and then she testified the Landlord had received the address on one of those dates.

I further note that under the Act documents sent in the mail are deemed served five days after the day of mailing. Therefore, if the Tenant mailed the address on November 3, then the Landlord is deemed to have received it on November 8, and by filing on November 19, had filed within the required 15 days.

Due to the vagueness of the evidence, I am unable to make a finding that the Landlord did not file a claim against the security deposit within 15 days of receipt of the Tenant's forwarding address.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$500.00** comprised of one month of rent in the amount of \$450.00 and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$200.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$300.00**.

This order may be filed in the Provincial Court (Small Claims) 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: March 23, 2011.

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Residential Tenancy Branch