



# 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 dealt with the landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for loss of rent, cleanings costs, and advertising costs?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

I was provided undisputed evidence by the parties as to the following background information. The month-to-month tenancy commenced April 15, 2009 and the tenants paid a \$750.00 security deposit. The tenancy agreement required the tenants to pay rent of \$1,500.00 on the 1<sup>st</sup> day of every month. No move-in or move-out condition inspection report was prepared by the landlord. On December 3, 2010 the tenants personally gave the landlord's wife a notice to end their tenancy effective December 31, 2010. The landlord's wife informed the tenants that she would not accept their short notice to end the tenancy. The landlords began advertising the unit on December 3, 2010 and showed the unit to prospective tenants during the month of December. The tenants vacated the rental unit in mid-December 2010 and returned the keys to the landlord at the end of December 2010. The landlords entered into a new tenancy agreement January 9, 2011 for a tenancy set to commence February 1, 2011.

The landlord is seeking to recover loss of rent for the month of January 2011 since the unit was not re-rented until February 1, 2011. The tenants were of the position that they intended to give notice to end the tenancy to the landlord on December 1, 2010 since the landlord's wife always picked up the rent on the 1<sup>st</sup> of every month; however, in

December the landlord's wife did not attend the property until the 3<sup>rd</sup>. The landlord refuted the tenants' position by stating that the landlord's wife did not always attend the rental unit on the 1<sup>st</sup> of every month and on occasion the rent would be picked up on the 5<sup>th</sup>, 6<sup>th</sup> or 7<sup>th</sup> of the month.

The landlord is seeking to recover the cost of cleaning in the amount of \$225.00. The landlord submitted that the tenants had not cleaned the kitchen or vacuum and did not remove garbage from the unit at the end of the tenancy. The tenants deny leaving the unit in a mess. The tenants questioned the veracity of the landlord's proof of paying a cleaner \$225.00. The tenants point to the fact the cancelled cheque does not provide a reference to the rental unit in the memo section of the cheque. The landlord acknowledged that he has several other rental units.

The landlord is seeking to recover advertising costs of \$329.96 from the tenants because of the short notice and because the tenants did not clean up the unit prior to showings causing the landlord to advertise longer and more aggressively. The tenants deny leaving the unit messy and claim the landlord told them on December 3 that the unit looked satisfactory.

Provided as documentary evidence for this hearing were copies of the tenancy agreement, advertising invoices, the tenants' notice to end tenancy, the tenancy agreement for the incoming tenants signed January 9, 2011, and the cancelled cheque for the cleaner dated January 17, 2011.

### Analysis

Section 45 of the Act provides for ways a tenant may end a tenancy. Section 45(1) applies to periodic (month-to-month) tenancies. Section 45(1) provides that an effective date must meet two criteria as set out below:

#### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Giving notice that complies with the above requirements is often referred to as giving “one full month” of written notice. Anything less than one full month is often referred to a “short” or “late” notice.

The tenancy agreement requires the tenants to pay rent on the 1<sup>st</sup> day of every month. Accordingly, to end the tenancy effective December 31, 2010 the tenants would have had to give the landlord written notice no later than November 30, 2010. It is upon the tenants to ensure their notice to end tenancy is delivered to the landlord in a timely manner. Giving the landlord notice after November 30, 2010, as was this case here, was insufficient notice to end the tenancy effective December 31, 2010.

Where a landlord is in receipt of short notice the landlord may accept that the tenants are ending the tenancy early and put the tenants on notice that their notice is short and the tenants may be held responsible for loss of rent. Based upon the tenants’ own testimony I accept that the landlord’s wife informed the tenants that their notice was insufficient and the landlord did not wish to accept the end of tenancy for December 31, 2010. Upon review of the landlord’s advertising receipts, I also accept that the landlord started advertising efforts on December 3, 2010 and that this was a reasonable effort to minimize the potential for loss of rent.

In light of the above, I find the tenants responsible for loss of rent for the month of January 2011 in the amount of \$1,500.00.

The condition of the rental unit at the end of the tenancy was in dispute. The landlords, as the applicants, bear the burden to prove the condition of the rental unit. In the absence of condition inspection reports, photographs, or other documentary evidence, I do not find the disputed verbal testimony sufficient to conclude the tenants owe the landlords for cleaning costs. Therefore, this portion of the landlords’ claim is dismissed.

I do not find the landlords have established an entitlement to recover advertising costs from the tenants. Advertising costs are an ordinary cost of doing business as a landlord and I find the landlords did not provide sufficient evidence that would show the tenants’ actions caused the landlords to incur advertising costs that would not have been ordinarily incurred. Therefore, I dismiss this portion of the landlords’ claim.

Given the relative success of the landlords' claims, I award the landlords \$30.00 of the \$50.00 filing fee paid for this application. I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the rent owed the landlords. The landlords are provided a Monetary Order calculated as follows:

January 2011 loss of rent	\$ 1,500.00
Filing fee	30.00
Less: security deposit	<u>(750.00)</u>
Monetary Order	\$ 780.00

The landlords must serve the Monetary Order upon the tenants and may enforce it in Provincial court (Small Claims) as an Order of that court.

### Conclusion

The landlords have been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$780.00 to serve upon the tenants.

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: June 09, 2011.

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Residential Tenancy Branch