



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, MNDC  
                             MNSD, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is for return of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

The landlord testified that the tenants did not give proper notice in January 2011 that they would be vacating the rental unit the end of February 2011 and that she found out the tenants were moving out after being contacted by the tenant's new landlord on February 5, 2011. The landlord stated she then called the tenant who verified that she would be vacating the rental unit at the end of February 2011.

The tenant testified that she gave the landlord notice on February 1 or 2 by text message. The tenant stated that she sent the landlord a text message on February 17, 2011 stating that she had vacated the rental unit, the suite cleaning was done, she just had to clean the carpets and remove some personal items and this would be completed on February 26, 2011. The tenant stated that when she returned to the suite to clean the carpets on February 26, 2011 she found that the landlord had changed the locks and the tenant maintains that the locks were changed on February 19, 2011.

The landlord stated that the locks were changed on February 28, 2011 after the tenant refused to return the keys to the rental unit unless the landlord returned the tenant's security deposit. Both parties stated that issues arose regarding return of the security deposit as the landlord wanted to give the tenant a post dated cheque and the tenant wanted cash.

The tenant stated that she tried a number of times to arrange a move-out inspection with the landlord but that the landlord always had a reason for not being available to meet with her. The landlord refuted the tenant's claim about meeting to complete a move-out inspection and stated that it was the tenant who would not make herself available.

The tenant in this application is seeking return for the \$550.00 security deposit.

The landlord stated that she did not advertise the rental unit as there was a resident in the building that had previously expressed interest in renting the unit. The landlord contacted this prospective tenant immediately after the tenant's notice was confirmed and the prospective tenant agreed to take the suite. The landlord left the suite empty for the month of March 2011 to allow the new tenant time to give their landlord proper notice.

The landlord in this application is seeking to keep the \$550.00 security as compensation for loss of rent.

Both parties referred to text messages regarding vacating the rental unit, move out inspections etc but neither party has submitted any of this evidence.

### Analysis

Based on the documentary evidence and testimony I find that the tenant is not entitled to return of the \$550.00 security deposit. The tenant did not give proper notice to the landlord per section 45 of the *Act* which directly resulted in the landlord suffering a loss of rent for the month of March 2011. Had the tenant given proper notice the landlord's new tenant would have had the opportunity to provide proper notice the month prior and eliminated the loss of rental income for March 2011.

### Residential Tenancy Act Section **45 Tenant's notice**

(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.

I find that the landlord has established a claim for \$550.00.

The landlord is entitled to recovery of the \$50.00 filing fee.

The tenant's application is dismissed in its entirety without leave to reapply.

### Conclusion

I find that the landlord has established a monetary claim for \$550.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$550.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$50.00**.

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 13, 2011.

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Residential Tenancy Branch