



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for unpaid rent and authorization to retain the tenant's security deposit and pet deposit in partial satisfaction of the rent owed.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent?
2. Is the landlord authorized to retain the tenant's security deposit and pet deposit?

### Background and Evidence

The parties entered into a written tenancy agreement for a tenancy set to commence August 1, 2010. The tenancy agreement indicates the fixed term was to expire April 30, 2010; however, both parties agreed it should read April 30, 2011. The tenant paid a \$550.00 security deposit and a \$200.00 pet deposit. The tenant was required to pay rent of \$1,100.00 on the 1<sup>st</sup> day of every month.

Part 2 of the tenancy agreement provides that at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time. Part 14 of the tenancy agreement provides:

- 3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.

The landlord submitted that he did not receive written notice to end the tenancy. Rather, he learned of the tenant's intentions to vacate after receiving a reference check. The landlord phoned the tenant and there was no response to his calls until the end of April 2011. The landlord was able to re-rent the unit starting June 1, 2011. The

landlord is seeking to recover the loss of rent for the month of May 2011 in the amount of \$1,100.00 from the tenant.

Both parties provided consistent testimony that the landlord went away on vacation at the end of February 2011 and that the landlord had emailed his tenants to provide them with contact information while he was away. The landlord's email also included information for tenants who planned on giving their notice while he was away and the landlord indicated that he still required written notice.

The tenant submitted that she believed that at the end of the fixed term her tenancy was over and she was unaware that she had to give the landlord notice to end the tenancy. The tenant submitted that the landlord knew approximately two weeks before she vacated, on April 14, 2011 when the reference check was made, that she would be moving out and that should be sufficient time to secure new tenants. Finally, the tenant submitted that the rental unit was covered in black mould.

The landlord acknowledged that there was some mould between the two single window panes.

Documentary evidence provided for this proceeding included: the tenancy agreement and addendum; the landlord's email of February 26, 2011; and, the tenant's written forwarding address dated May 10, 2011.

### Analysis

When parties enter into a fixed term tenancy they must agree on what is to happen at the end of the tenancy. The Act requires that the parties agree that the tenancy will either: end on the expiry date and the tenant must vacate; or, the tenancy may continue on a periodic basis (ie: month to month) or for another fixed term.

In this case, the tenancy agreement indicates the tenancy may continue at the end of the fixed term and that it would be renewed on a monthly basis. The tenancy agreement did not require the tenant to vacate the rental unit at the end of the fixed term.

Section 44 of the Act provides for ways a tenancy ends. Section 44(1)(b) provides that a tenancy may end, without notice, where the tenancy agreement provides that at the end of the fixed term the tenant is required to vacate the rental unit. Clearly, this provision does not apply in this situation because the tenancy agreement did not require the tenant to vacate at the end of the fixed term.

Section 44 also provides that a tenancy may end with a tenant's notice to end tenancy, given section 45 of the Act. Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy. It also provides that the effective date of the notice must not be earlier than:

- a. One month after the landlord receives the notice;
- b. The expiry date of the fixed term; and,
- c. The effective date must be the last day of the month.

The Act provides that all notices to end tenancy must be in writing.

In accordance with section 45(2), in order to end the tenancy April 30, 2011 with proper notice to the landlord, the landlord would have to receive the tenant's notice no later than March 31, 2011.

Based upon the evidence before me, the tenant did not give the landlord sufficient written notice to end the tenancy April 30, 2011 and she violated the requirements of the Act. I find it reasonable, and I accept the landlord's evidence, that the landlord lost a month's rent given the late verbal notice he received from the tenant.

As explained to the tenant during the hearing, it is upon her to read and understand the terms of the tenancy agreement she entered into. Failure to understand her obligations is not a basis to exempt her from the requirements of the Act.

Further, I reject the tenant's position that she was entitled to end the tenancy without proper notice because there was mould in the unit. I was not provided evidence that the tenant had complained of mould to the landlord in writing. Where a tenant requires the landlord to make repairs and he will not, the tenant has remedies under the Act, including requests for repair orders and authorization to end the tenancy early by making an Application for Dispute Resolution. The tenant did not pursue any of these remedies available to her if the mould was that bad.

In light of the above, I grant the landlord's request for recovery of the loss of rent and the filing fee in the total amount of \$1,150.00. I authorize the landlord to retain the tenant's security deposit and pet deposit in partial satisfaction of the rent owed to the landlord and I provide the landlord with a Monetary Order in the net amount of \$400.00 to serve upon the tenant. The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was successful in this application. The landlord has been authorized to retain the tenant's security deposit and pet deposit and has been provided a Monetary Order for the balance owing of \$400.00 to serve upon the tenant.

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: August 25, 2011.

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Residential Tenancy Branch