



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord company attended the conference call hearing and both provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. The landlord's agent also called a witness, being the owner of the rental unit. The parties and the witness gave affirmed testimony and the parties were given the opportunity to cross examine each other on the evidence. All evidence and testimony provided have been reviewed and are considered in this Decision.

During the course of the hearing, the landlord's agent stated that the landlord company is no longer managing the rental unit and provided a copy of a letter from the owner asking that if any monetary order is awarded to the tenant, that it be ordered against the owner and not the landlord company. The landlord company is a property management company that was employed by the owner during the tenancy. All documentation between the parties has been between the tenant and the landlord company. After being given the opportunity, the tenant did not apply to amend the application. Therefore, the landlord's request to change the style of cause, or cause an order to be issued against a person other than the respondent is hereby denied.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit, or double the amount of the pet damage deposit or security deposit?

### Background and Evidence

The parties agree that this fixed-term tenancy began on September 1, 2010 and expired on August 31, 2011. The tenancy agreement, a copy of which was provided by both parties for this hearing, states that at the end of the fixed term the tenancy continues as a month-to-month tenancy. Rent in the amount of \$1,300.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord collected a security deposit from the tenant in the amount of \$650.00 on August 28, 2010 as well as a pet damage deposit of \$325.00.

The tenant testified that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, which contained an effective date of vacancy of August 31, 2011. A copy of that notice was also provided for this hearing and it states that the reason for ending the tenancy is: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The tenant learned on September 28, 2011 that another tenant had rented the rental unit.

The tenant further testified that the landlord asked the tenant to agree to deductions from the security deposit, which the tenant agreed to in writing, however the landlord did not cause the repairs to be done that were the subject of the deductions. A copy of that document was also provided in advance of the hearing. Those deductions were \$110.00 for carpet cleaning, \$100.00 for depreciation to carpet in the family room, \$40.00 to replace a broken blind on the front door, and \$25.00 for yard clean up. The tenant received \$700.00 of the security deposit back from the landlord, and the document shows that that amount was paid on September 23, 2011. The tenant provided a forwarding address to the landlord on September 12, 2011.

The tenant claims double the amount of the security deposit and pet damage deposit, that was not returned, as well as double the rental amount for the landlord's failure to use the property for the purposes stated in the landlord's notice to end the tenancy, for a total claim of \$3,150.00.

The landlord's agent testified that after the tenant received the landlord's notice to end the tenancy, the tenant gave the landlord a written 10 day notice to end the tenancy, however because the tenancy was a fixed term, the tenant could not end the tenancy early. Therefore, the parties had a verbal conversation and the landlord's agent sent the tenant a Mutual Agreement to End Tenancy, which was signed by both parties with an effective date of vacancy of August 31, 2011. The landlord's agent stated that the Mutual Agreement to End Tenancy revoked the tenant's 10 day notice and the landlord's 2 month notice. A copy of the Mutual Agreement to End Tenancy dated July

8, 2011 was also provided for this hearing, which contains an asterisk and the statement, "See letter addendum dated July 15, 2011." The addendum is a letter from the landlord to the tenant stating that the mutual agreement requires the tenant's signature, and reverses the tenant's 10 day notice to end the tenancy. It also states that the parties verbally agreed that the tenant would be revoking the 10 day notice because the tenancy is a fixed term. The letter is signed by the landlord's agent but not by the tenant.

After the tenancy ended, the property management company had no further dealing with the rental unit.

The landlord's witness is the owner of the rental unit, who testified that the owners had every intention of moving into the rental unit at the end of the fixed term. However, the owners had a baby who was ill, and due to previous pets in the rental unit and other renovations required, the landlord has not yet been able to move into the rental unit. The witness also stated that the rental unit is not in a suitable condition for residing in. At the end of September, 2011, the owner started renovations by removing the carpets. The owner expects to move into the rental unit by January 15, 2012.

The landlord's witness also testified that for insurance reasons, the rental unit cannot remain vacant, and another person is residing in the rental unit but is not paying any rent. The witness provided a sworn Affidavit from that person, stating that the person was being evicted from other rental premises due to the landlord selling the house. The Affidavit also states that the condition of this rental unit is not in a suitable living condition. The Affidavit makes no mention of any rental amount, or whether or not the person pays rent to the owner.

### Analysis

The *Residential Tenancy Act* states that a landlord may end a periodic tenancy for landlord's use of property; the landlord may not end a tenancy for the landlord's use of the property until after the end of any fixed term. In this case, the notice was effective at the end of the fixed term, which I find is lawful. The landlord is also required to give the tenant 2 month's notice to vacate the rental unit and provide the tenant with the equivalent of one month's rent. In this case, the landlord did provide the tenant with 2 months notice and the last month's rent for free, which I find satisfies that section of the legislation. The tenant then gave 10 day's notice to vacate the rental unit earlier than the effective date of the landlord's notice. The landlord and tenant had a conversation thereafter wherein the landlord advised the tenant that since it was not a periodic tenancy the tenant could not legally give 10 day's notice to vacate earlier. The parties

then entered into a mutual agreement to end the tenancy. Regardless of whether or not the landlord's advice to the tenant was correct, the tenant signed the agreement to end the tenancy. I agree with the landlord that once the Mutual Agreement to End Tenancy was signed by the parties, the tenant's notice and the landlord's notice are both revoked. The landlord was therefore not bound by the legislation that requires the landlord to use the rental property for the reasons stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property and the tenant's application for a monetary order for the landlord's failure to comply with the *Act* cannot succeed.

The tenant has also claimed return of the security deposit, however the parties agree and have provided evidence that the tenant agreed in writing that the landlord keep that portion of the security deposit for carpet cleaning, carpet depreciation, broken blinds and yard clean-up. The tenant provided a forwarding address to the landlord on September 12, 2011 and the remaining \$700.00 was returned to the tenant on September 23, 2011, which I find is within the 15 days as required by the *Residential Tenancy Act*. Therefore, I find that the tenant has failed to establish that the landlord has breached the *Act* or the tenancy agreement, and the tenant's application for return of the security deposit and pet damage deposit cannot succeed.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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: December 21, 2011.

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Residential Tenancy Branch