



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the upper suite of a single detached home. Pursuant to a written agreement, the tenancy was for a one year term starting on May 15, 2011. The rent was \$1550.00 per month and the tenant paid a security deposit of \$775.00.

A previous Residential Tenancy Branch hearing was conducted on January 6, 2012 wherein the landlord was granted an Order of Possession effective May 31, 2012, and the tenant was found entitled to compensation of one month's rent pursuant to Section 51(1) of the Act. The Dispute Resolution Officer's decision determined that this was a fixed term tenancy, and referenced the parties to the relevant provisions of the Act concerning the tenant's compensation when served with a 2 Month Notice to End Tenancy.

The tenant's claim is as follows:

- Overpayment of rent for February 2012:	\$ 481.05
- Compensation for one month's rent:	\$1550.00
- Return of the security deposit:	\$ 775.00
- Filing fee:	\$ 50.00
- Sub-total:	\$2856.05

The landlord argues that the decision of January 6, 2012 established that the tenancy was a fixed term, and that the Order of Possession for or before May 31, 2012 obliged the tenant to stay until the date of the order, and that the tenant was not entitled to give the landlord a 10 day notice to end the tenancy early.

The landlord's monetary claim is as follows:

- Loss of rental income for March, April and May 2012:	\$4650.00
- Utilities owed for the above noted period:	\$ 515.09
- Damage (estimate):	\$ 554.40
- Sub-total:	\$5719.49

Concerning damages, the parties did not dispute that it was in all likelihood by the movers gouging walls while taking furniture through the hallways. The tenant agreed; however she felt that the quote was excessive for the actual amount of damage.

### Analysis

At issue lies the parties' respective interpretation of the January 6, 2012 decision and order. The landlord's version is that the order provided a date ending a fixed term tenancy, and as such the tenant was not entitled to treat the tenancy as periodic and to move out early. The tenant's version is that since the decision entitled the tenant to one month's rent pursuant to Section 51(1), the tenancy is periodic and triggered the tenant's right to give the landlord a 10 day notice to end the tenancy early.

The decision states that the landlord acknowledged that the first 2 Month Notice to End Tenancy issued to the tenant was invalid; therefore the landlord gave the tenant a new 2 Month Notice to End Tenancy requiring the tenant to move out on May 16, 2012, exactly one year after the start of the fixed term. The decision also reveals that the tenant disputed the landlord's ability to end a fixed term. This very argument from the tenant, combined with the documentary evidence before me, satisfies me that the tenancy was a fixed term.

The Act states that a landlord cannot end a fixed term tenancy prematurely. The landlord gave the tenant a 2 Month Notice to End the Tenancy effective the date the fixed term ended, and put the tenant on notice that the tenancy would not continue.

I find that when the landlord chose to end the tenancy in this manner, the landlord triggered the tenant's right to compensation of a month's rent under section 51(1), as stated in the original decision. The decision does not state that the tenant could give the landlord a 10 day notice.

Section 50(1) of the Act provides for a tenant to give the landlord a 10 day notice to end tenancy if the tenancy is periodic; according to the evidence before me it is abundantly clear the tenancy was a fixed term and therefore the tenant was not entitled to leave before the end of the fixed term. The original decision empowered the landlord with an Order of Possession effective on or before May 31, 2012, which is a correction to the landlord's effective date of May 16, 2012 on the notice to end tenancy. The landlord however provided a version of the tenancy agreement showing an end date of May 15, 2012, which indicates that the landlord expected the tenant to pay rent up to that date; accordingly the end of the fixed term is May 15, 2012 and the tenant is no longer bound by the terms of the contract beyond that date.

The tenant left on February 20, 2012. Since the tenant is entitled to compensation the equivalent of one month's rent under the 2 Month Notice to End Tenancy, I find that the landlord is entitled to recover the loss of rental income until April 15, 2012. The tenant paid rent until the end of February 2012; therefore the landlord is entitled to recover \$1550.00 for March 2012, and \$775.00 for half of April for the sum of \$2325.00. The claim for unpaid utilities is also reduced by half for the sum of \$257.55

Concerning the security deposit; Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address on February 25, 2012, but the security deposit was not returned and the landlord did not apply for dispute resolution within the required statutory time frame. Therefore the tenant is entitled to the return of double the amount of the security deposit for \$1550.00.

Turning to the claim for damages; the tenant agreed to the damages but found the claim excessive. The landlord only provided one estimate and the repairs have not been completed to date. In the absence of more estimates to substantiate the amount of the claim or a receipt for repairs I grant the landlord half the amount for the sum of \$277.25.

### Conclusion

The landlord established a claim of \$2859.80. Under her application the tenant established a claim of \$1550.00 for a balance of \$1309.80 owed to the landlord. I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application. Since the landlord kept the tenant's \$775.00 security deposit, pursuant to Section 72 of the Act, I set off the amount awarded to the landlord against the tenant's security deposit and grant the landlord a monetary order for the balance of \$534.80.

This Order may be registered in the Small Claims Court 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: April 26, 2012.

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Residential Tenancy Branch