



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on February 29, 2012, a Canada post tracking number was provided as evidence of service, the tenant (JB) did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant (JB) has been duly served in accordance with the Act.

Both the landlord and the tenant (KD) appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?  
Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The tenancy began on December, 1, 2010. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenants.

The landlord testified on February 9, 2012, the tenant (KD) notified him that he would be vacating the rental unit prior to the end of February 2012. The landlord stated that (KD) he was not sure if the co-tenant (JB) was going to continue to reside in the rental unit after the end of February 2012.

The landlord testified that he called the tenant (JB) and was informed that he would not be staying if the tenant (KD) was leaving. The landlord stated that he asked the tenant

(KD) to provide him with written notice to end tenancy, that way he could immediately start advertising the unit for rent. The landlord stated he never received notice to end tenancy in writing as requested.

The landlord testified when the tenants did leave the rental unit on February 27, 2012, he immediately advertised the rental unit in two local papers and was unable to find a tenant for March 2012. The landlord is seeking compensation for loss rent for March 2012, as the tenants did not provided him with proper notice to end tenancy as required by the Act.

The tenant (KD) agreed that he verbally told the landlord on February 9, 2012, that he was vacating the rental unit before the end of February 2012. The tenant (KD) stated he was not aware of the request for written notice and he would have faxed the landlord with the written notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

#### **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

In this case, rent is due on the first of the month under the terms of the tenancy agreement. The tenants gave verbal notice on February 9, 2012, to end tenancy on February 27, 2012. Under section 45 of the Act the earliest date the tenants could have legally ended the tenancy was on March 31, 2012. Therefore, I find the tenants did not comply with section 45 of the Act

The Residential Tenancy Act states - Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The evidence of the landlord was he did not advertise the rental unit on February 9, 2012, as the tenants were to provide him with confirmation in writing that the tenancy was ended at the end of February 2012. The tenants failed to provide that confirmation to the landlord. As a result, the landlord was not able to commence advertising the unit until February 27, 2012, when the tenants vacated the rental unit. The evidence was the landlord then immediately advertised the unit in two local new papers. However, was unable to rent the unit for the month of March 2012. I find that the landlord did make a reasonable effort to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for March 2012, in the amount of **\$950.00**.

I find that the landlord has established a total monetary claim of **\$1,000.00** comprised rent owed for March 2012 and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$475.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$525.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit as partial satisfaction of the claim, and is granted an order for the balance due.

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: May 02, 2012.

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Residential Tenancy Branch