



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the landlord's application for authorization to retain the tenant's security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord withdrew the request for recovery of the filing fee. Accordingly, I make such award with this decision.

### Issue(s) to be Decided

Are the landlords authorized to retain the tenant's security deposit?

### Background and Evidence

The tenancy commenced November 1, 2009 and the tenant paid a \$650.00 security deposit. The monthly rent of \$1,300.00 was due on the 1<sup>st</sup> day of every month. After the one year fixed term expired the tenancy continued on a month to month basis.

On September 20, 2011 the tenant emailed the landlord to give notice to end tenancy. The tenant paid one-half of the month's rent for October 2011 and vacated the rental unit in mid-October 2011. The tenant did not have the landlord's consent to use the security deposit towards rent. Rather, the landlord had requested the tenant pay the full rent owing.

The landlords have made this application seeking authorization to retain the tenant's security deposit in satisfaction of unpaid rent for October 2011. The landlord stated the rental unit was re-rented for December 2011.

The tenant was of the position she gave almost 30 days of notice to end tenancy and was hoping the landlords would not pursue her for the remainder of unpaid rent.

### Analysis

Where a tenant wishes to end a month to month tenancy the tenant must give the landlord one full month of written notice pursuant to section 45 of the Act. Section 45 provides that the effective date of such notice must be given at least 30 days prior to the effective date and that the effective date be the day before rent is due. Accordingly, where rent is due on the 1<sup>st</sup> day of the month and is notice given in September 2011 the effective date must be October 31, 2011.

A tenant is also required to pay rent when due under the terms of the tenancy agreement. In this case, the monthly rent of \$1,300.00 was payable October 1, 2011. The tenant did not have a basis under the Act to withhold any portion of the rent for October 2011.

The Act provides that a tenant may apply a security deposit to rent only with the landlord's permission. The tenant did not have such permission in this case.

For the reasons given above, I find the landlords were entitled to receive the full amount of rent for October 2011. Since the tenant only paid one-half of the rent for October 2011 and the landlords did not secure replacement tenants for the remainder of October 2011, I grant the landlords' request to retain the security deposit in satisfaction of unpaid rent for October 2011.

### Conclusion

The landlords are authorized to retain the tenant's security deposit in satisfaction of unpaid rent for October 2011.

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 01, 2012.

---

Residential Tenancy Branch