



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD and FF

### Introduction

This application was brought by the landlord on June 29, 2012 seeking a monetary award for damage to the rental unit, loss of rent due to breach of a fixed term rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on July 6, 2012, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

At the commencement of the hearing, the landlord advised that she wished to revise her claim to authorization to retain the tenants' security deposit only.

### Issue(s) to be Decided

This matter now requires a decision on whether the landlord is entitled to authorization to retain the tenants' security deposit.

### Background and Evidence

This tenancy began on June 1, 2012, although the tenants moved in two days early, under a six-month fixed term rental agreement set to end on December 21, 2012. Rent was \$1,200 per month and the landlord holds a security deposit of \$600.

During the hearing, the landlord gave evidence that the tenants advised her by text message on June 21, 2012 that they had already vacated the rental unit. The landlord also noted some wall damage resulting from the move.

### Analysis

Section 45(2)(b) of the *Act* provides that a tenant in a fixed term rental agreement may only give notice to end the tenancy on a date that is not before the end of tenancy date set by the agreement which was December 31, 2012.

Even if the tenancy was on a month to month basis, the tenants failed to provide the one month notice following the next rent due date after service which, in the present case would have been July 31, 2012.

However, even though the landlord was unable to begin a new tenancy until August 1, 2012, she has chosen to request only authorization to retain the security deposit in full satisfaction of the loss.

I find that the security deposit is half or less than the landlord's loss as a result of the breach of the fixed term agreement and, as authorized by section 72 of the *Act*, I hereby authorize and order that she retain the security deposit against the loss of rent.

### Conclusion

The landlord is authorized to retain the tenants' security deposit in set off against loss of rent due to the tenants' breach of the fixed term rental agreement.

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: September 10, 2012.

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Residential Tenancy Branch