



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNR, MNDC, MNSD, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of rent paid for the latter half of July 2012 and for the return of the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income and the filing fee? Did the tenant give the landlord adequate notice to end the tenancy? Is the tenant entitled to the return of her security deposit?

### **Background and Evidence**

The parties entered into a one year fixed term tenancy on June 01, 2012. The monthly rent was \$1,800.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$900.00.

On June 20, 2012, the tenant gave the landlord verbal notice to end the tenancy. The parties met and discussed the notice and the landlord agreed to accept it. The tenant stated based on the conversation, she did not see the need to provide the landlord with a written notice.

Shortly after, the landlord informed the tenant that he had found a tenant for July 15 and requested that she move out by July 14. The tenant made the arrangements to move out by packing her belongings, renting a moving truck and buying air tickets and for herself and her family. On or about July 09, the landlord informed the tenant that the deal with the new tenants had fallen through and that she did not have to move out. The tenant had already made all the arrangements and had signed a new lease and therefore decided to follow through with the arrangements.

The tenant is requesting the return of rent that she paid for July 15 - 31 and is also requesting the return of her security deposit.

The landlord stated that despite his efforts to find a new tenant to move in immediately, he found one for August 15 and is claiming the loss of income for the first half of August. The landlord has also applied to retain the security deposit in satisfaction of his claim.

### **Analysis**

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term 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
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the tenant gave notice on June 20 and ended the tenancy on July 14, 2012. With a notice given on June 20, the earliest the tenant could legally end the tenancy would be July 31, 2012. Therefore I find that the tenant is not entitled to the return of rent paid for July 15-31.

Even though the tenant was in a fixed term tenancy and decided to end the tenancy prior to the end date, I find that the landlord agreed to end the tenancy early and even asked the tenant to move out on July 14. Unfortunately, the new prospective tenants changed their minds about moving in, but the tenant had already made plans to move out based on the landlord's direction to do so.

Since the landlord had in effect agreed to end the tenancy, I find that the landlord is not entitled to rent or loss of income for the period following July 31, 2012. Therefore the landlord must return the security deposit to the tenant. Since the landlord has not proven his case, he must bear the cost of filing his application.

### **Conclusion**

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount due of \$900.00. This order may be filed 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: September 20, 2012.

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Residential Tenancy Branch