



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD, FF / MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit and pet damage deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for the return of the security deposit and pet damage deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, what became a month-to-month tenancy began on December 1, 2009. Monthly rent of \$1,100.00 was due and payable in advance on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were both collected. A move-in condition inspection report was signed by the landlord at the outset of tenancy before being given to the tenant to complete. During the course of the tenancy the tenant added notations to the report. However, the report was not returned to the landlord until the tenant served it with her other documentary evidence for the purposes of this hearing.

While the parties have identified various particular dates, there is no dispute that the tenant gave notice sometime in July of her intent to end the tenancy by the end of July. Rent was paid to July 31 and the tenant vacated the unit by on or about July 23, 2012.

Despite their efforts to schedule a mutually agreeable time, a move-out condition inspection was not undertaken by the parties together at the end of tenancy. In

summary, move-in and move-out condition inspections and reports were not completed as two separate and distinct events, respectively, at the start and at the end of tenancy.

The tenant provided a forwarding address by date of August 1, 2012, and the landlord filed her application for dispute resolution on August 14, 2012.

The landlord testified that, following the end of tenancy, it was necessary to clean and undertake certain other work in the unit in order to make it suitable for new renters. The landlord advertised for new renters on August 8, 2012. It was as a result of that advertisement that she found new renters effective October 1, 2012.

While the landlord takes the position that her entitlement to retention of the security and pet damage deposits arises principally out of the tenant's improper notice to end tenancy, she also claims that cleaning and other work required in the unit serve to support her application to retain these deposits.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

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.

Based on the documentary evidence and testimony, I find that the tenant failed to give proper notice to end the tenancy. Specifically, one full month's notice was not provided as required by the Act.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

For information, the attention of the parties is also drawn to other particular sections of the Act which concern the move-in and move-out condition inspection processes.

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

As previously noted, the completion of move-in and move-out condition inspection reports was not undertaken in compliance with the requirements set out in the Act.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, as follows:

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.

I find that even while the landlord knew in early to mid July of the tenant's intention to end the tenancy at the end of July, the landlord did not start advertising for new renters until August 8, 2012. In the absence of the comparative results of move-in and move-out condition inspection reports, I find that the landlord has provided insufficient evidence to support a claim that delay in advertising was, in part at least, the result of the condition of the unit at the end of tenancy. In summary, I find that the landlord's efforts to mitigate her loss of rental income are insufficient to establish entitlement to compensation for a full month's rent of \$1,100.00. Rather, I find that the landlord has

established entitlement to compensation limited to one half month's rent in the amount of \$550.00.

Following from all of the above, I hereby order that the landlord retain the tenant's full security deposit of \$550.00. I further order that the landlord repay the tenant the full amount of her pet damage deposit of \$550.00, and I grant the tenant a monetary order to that effect.

As each of the parties has achieved a measure of success with their applications, the respective particular applications to recover the filing fee are both hereby dismissed.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$550.00**. Should it be necessary, this order may be served on the landlord, 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: October 29, 2012.

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Residential Tenancy Branch