



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND, MNDC, MNSD

### Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and authority to retain the tenant's security deposit. The landlord attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered."

### Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from April 1, 2012 to March 31, 2013. Monthly rent of \$650.00 was due and payable in advance on the first day of each month, and a security deposit of \$325.00 was collected.

In October 2012, the tenant gave notice of her intent to vacate the unit at the end of November 2012. Subsequently, rent was paid to the end of November and the tenant vacated the unit effective November 30, 2012. Later, by e-mail dated December 6, 2012, the tenant informed the landlord of her forwarding address. Thereafter, the landlord filed an application for dispute resolution on December 13, 2012.

Despite advertising, new renters have not presently been found.

## Analysis

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

45(2) 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **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.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, in part as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant's manner of ending the fixed term tenancy does not comply with the statutory provisions set out above. Further, while new renters have not presently been found, I find that the landlord undertook in a timely fashion to mitigate his loss of rental income by advertising for new renters following the end of this tenancy.

Finally, I find that the landlord's application to retain the tenant's security deposit was made within 15 days after he was informed by the tenant of her forwarding address.

### Conclusion

The landlord is hereby ordered to retain the tenant's security deposit of \$325.00.

The landlord has decided not to pursue compensation greater than the amount of the security deposit, arising from a loss of rental income in excess of that amount.

The landlord's application for a monetary order as compensation for damage to the unit, site or property has been withdrawn.

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: March 08, 2013

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Residential Tenancy Branch

