



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Akal Dev Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to retain the security deposit. The hearing was conducted via teleconference and was attended by the landlord, the tenant and his interpreter.

The landlord clarified at the outset that despite stating on his Application that he was seeking a monetary order for \$795.00 he actually is only seeking the amount of the security deposit or \$397.50

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 38, 45 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree they had agreed on January 1, 2013 that the tenant was going to rent the rental unit for \$795.00 per month due on the 1<sup>st</sup> of each month beginning February 1, 2013 and the tenant paid a security deposit in the amount of \$397.50.

The tenant submits he gave the landlord a verbal notice on January 12, 2013 and then written notice on January 14, 2013 that he had changed his mind and would not be renting the unit.

### Analysis

Three tenets of contracts are consensus, capacity, and consideration. From the testimony of both parties I find the parties had agreed or come to consensus on the terms of a tenancy agreement, despite not being in writing; that the tenant provided a security deposit in consideration of that agreement; and that no one is arguing that there are any issues with either party's capacity to enter into an agreement. For these reasons I find the parties entered into a tenancy agreement.

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In the case before me I find that the parties entered into a tenancy agreement on January 1, 2013 and as such both parties are subject to the terms of the agreement and the *Act*.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Based on the tenant's testimony, I find he did not provide the landlord with notice to end the tenancy that complied with Section 45 and as such the landlord is entitled to rent for the month of February 2013.

However, as the landlord has adjusted his claim to include only retaining the security deposit I find the landlord accept the security deposit as compensation in full for lost rent for the month of February 2013.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$447.50** comprised of \$397.50 rent owed and the \$50.00 fee paid by the landlord for this application. I order the landlord may deduct the security deposit and

interest held in the amount of \$397.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 29, 2013

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Residential Tenancy Branch

