



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MALASPINA REALTY & PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

MNR, MNDC, MNSD , FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord to retain the security deposit and a monetary order for rent owed for the first month of the tenancy, due to the tenant ending the tenancy without proper notice under the Act.

Despite being served by registered mail sent on June 19, 2013, the respondent did not appear and the hearing proceeded in the absence of the tenant.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation for loss of rent?

Is the landlord entitled to retain the security and pet damage deposits in partial satisfaction of the claim?

### **Background and Evidence**

The landlord testified that a fixed term tenancy agreement was signed on May 21, 2013 for a tenancy that was scheduled to start on June 1, 2013 and expire on May 31, 2014. The rent was set at \$1,200.00. A security deposit of \$600.00 was paid by the tenant. The landlord submitted into evidence a copy of the tenancy agreement.

The landlord stated that, after the agreement was signed, the tenant later advised the landlord by telephone that he would not be moving into the unit at all, but offered that that the landlord could retain the security deposit.

The landlord testified that the tenant later provided his forwarding address by email and demanded repayment of the security deposit.

The landlord's position is that the tenant did not give sufficient notice to end the tenancy to allow the landlord to re-rent the unit to avoid a loss of revenue for the month of June 2013 and therefore still owes \$1,200.00 rent for the month of June 2013. However, the landlord is only seeking to retain the tenant's security deposit in compensation for the loss, plus the \$50.00 cost of filing the application.

### **Analysis**

I find that section 16 of the Act provides that 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.

I find that section 6 of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and either a landlord or a tenant may make an application for dispute resolution if they cannot resolve a dispute relating to the Act or the Agreement.

In this instance I find that the parties entered into a written tenancy agreement which stated that the tenant would take possession on June 1, 2013 for a fixed term of one year.

I find that a tenant is at liberty to terminate a tenancy but must do so in compliance with the Act or liability may follow.

Section 45 of the Act gives the tenant a right to end a periodic month-to-month tenancy by giving the landlord written notice 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.

However, a fixed term tenancy cannot be validly ended by a tenant until the expiry date of the contract, or the tenant will incur liability for losses that result from the premature termination of the contract.

In this instance, I find that the earliest day that the tenant could have ended this tenancy, in compliance with the fixed-term agreement, would be May 31, 2014. Therefore, I find that the tenant did not properly terminate the tenancy in compliance with the Act or agreement.

Section 7 of the Act states that, if a landlord or a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results. The landlord has claimed a loss of \$650.00 and I find that the tenant is liable for this amount.

Based on the evidence and testimony, I find that the landlord is entitled to the requested monetary claim of \$650.00, comprised of \$600.00 for a portion of the rental loss for June 2013 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the tenant's security deposit of \$600.00 in partial satisfaction of the claim leaving a balance due of \$50.00.

I hereby grant the Landlord an order under section 67 for \$50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The landlord is successful in the application and is granted a Monetary Order for loss of revenue and an order to retain the tenant's security deposit.

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 24, 2013

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Residential Tenancy Branch

