



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

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

Both parties attended 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 which was signed by the parties on June 9, 2013, the fixed term of tenancy is from July 1, 2013 to June 30, 2014. Monthly rent of \$955.00 is due and payable in advance on the first day of each month, and a security deposit of \$477.00 was collected.

The parties initially agreed that the rental unit would be #210. However, after learning from the building manager that #109 would soon be available, the tenant decided that #109 would better suit her lifestyle. The tenant testified that she trusted the building manager's assurances that #109 would be ready for occupancy by July 1, 2013.

The tenant claims that when she subsequently attended the unit in the early afternoon of July 1, 2013, it looked like a "construction site." She testified that she attended two more times later in the day and found that it had still not been made sufficiently ready for her to take possession.

However, the landlord claims that the tenant attended the unit on June 30, 2013 while he was still in the process of readying it for occupancy. He claims that when the tenant attended again the next day, July 1, 2013, he declined to give her the unit keys as she did not have the first month's rent ready with her for payment. He also testified that, in any event, she appeared to have decided that she no longer wanted to rent the unit.

The tenant acknowledges that comments made by other renters after she first saw the unit in June, contributed to her feeling of uneasiness about the landlord, the condition of the building as well as the condition of the unit. By letter dated July 2, 2013 the tenant formally gave notice to end the tenancy and requested the return of her security deposit. In her letter, the tenant also provided the landlord with her forwarding address.

The landlord filed an application for dispute resolution on July 9, 2013. As new renters were found effective July 15, 2013, the landlord presently seeks to retain the security deposit as compensation for unpaid rent / loss of rental income for the first half of July.

The tenant filed an application for dispute resolution on September 10, 2013. The tenant seeks the double return of her security deposit, arguing that the unit was unfit for occupancy on July 1, 2013, and claiming that the landlord failed to return her security deposit within 15 days after she provided him with her forwarding address.

### 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 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

As previously noted, the landlord filed his application on July 9, 2013, and the application includes a request to retain the security deposit. Whether I found that tenancy ended on July 2, 2013 when the tenant gave notice to end the tenancy, or that tenancy ended on July 15, 2013 when new renters took possession of the unit, clearly the landlord's application was filed in compliance with the 15 day period prescribed in the Act.

Further, as the tenant provided her forwarding address on July 2, 2013, and the landlord's application to retain the security deposit was filed on July 9, 2013, I find that the landlord's application was filed within the 15 day period prescribed in the Act. For all of the aforementioned reasons, the tenant's request for application of the doubling provisions in the Act is hereby dismissed.

Section 45 of the Act speaks to **Tenant's notice**, and provides 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.

In the circumstances of this dispute, I find that the tenant did not provide proper notice to end the fixed term tenancy. I also find that the landlord was able to mitigate the loss of rental income by finding new renters effective July 15, 2013.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has failed to meet the burden of proving that the unit was unfit for occupancy at the time when her tenancy was scheduled to begin on July 1, 2013. Even if I were to accept that certain work was still required in the unit on July 1, 2013, I note that the tenant did not apparently come prepared to pay July's rent to the building manager on the due date of July 1, 2013, in exchange for unit keys.

Had the tenant taken possession of the unit and determined that certain work was still required, she had the option of applying for dispute resolution, seeking either an order instructing the landlord to make repairs to the unit, or a reduction in rent for repairs, services or facilities agreed upon but not provided, or both as applicable. However, she did not do so.

In summary, while there may be other undisclosed factors, I find it more likely than not that the tenant dissuaded herself from wanting to proceed with the tenancy on the basis,

in part at least, of reports she heard from others about the condition of the building. Accordingly, the tenant's application for return of her security deposit is hereby dismissed, and I find that the landlord has established entitlement to retention of the security deposit.

Conclusion

The tenant's application is hereby dismissed.

The landlord is ordered to retain the tenant's security deposit.

The respective applications to recover the filing fee are hereby dismissed.

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 09, 2013

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Residential Tenancy Branch

