



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Asset Management Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNSD, MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution. The tenant filed on September 30, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38

The landlord filed on October 10, 2013 for Orders as follows;

1. A monetary Order for Unpaid rent – section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties each acknowledged receiving all the evidence of the other. The parties were apprised that only relevant evidence will be considered in the Decision.

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

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

### **Background and Evidence**

The *relevant* evidence in this matter is as follows. The tenancy began as a written fixed term tenancy agreement beginning February 01, 2013 for a period of one year. A copy

of the contractual agreement signed by the parties January 28, 2013 was submitted into evidence. At the outset of the tenancy the landlord collected a security deposit in the amount of \$362.50 which the landlord retains in trust. The parties agree there was a *move in* and *move out* mutual condition inspections conducted. It is undisputed the tenant vacated May 30, 2013 pursuant to notifying the landlord by sending the landlord a Mutual Agreement to End a Tenancy form on May 06, 2013 and discussions they would be vacating at the end of May 2013.

The landlord testified they received the tenant's Notice to End tenancy; and, despite not receiving a Notice to End in compliance with the Act the landlord testified they acted to mitigate potential losses of revenue by advertising the rental unit on-line via Craigslist, and placing a 'for rent sign' outside the rental property. The landlord testified they further notified the tenant by letter mail that if they did not rent the unit for June 01, 2013 they would hold the tenant responsible for June rent. The landlord did not testify if they received enquiries to their efforts before or after June 01, 2013, however claims that they rented the unit for July 01, 2013. The landlord sought loss of revenue for June 2013 in the amount of \$725.00. The landlord further seeks an early lease termination fee of \$125.00 as a changeover service charge to re-rent the unit to which the parties agreed would be payable if the tenant ended the tenancy prior to the expiry of the fixed term lease. In addition the landlord seeks \$35.00 for an occurrence of NSF charges because of a dissolved pre-authorized payment arrangement.

The tenant generally disputes the landlord's claims. The tenant and landlord agree that the tenant provided their written forwarding address in writing on September 06, 2013. The tenant sought return of their security deposit plus compensation as permitted under Section 38 of the Act.

### **Analysis**

The onus is on the respective parties to prove their claims. On preponderance of all the relevant evidence submitted and on balance of probabilities, I find as follows:

#### **Tenant's claim**

**Section 38(1)** of the Act, in relevant part, provides as follows

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

38(1)(a)            the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

and,

**38(6)** If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$362.50 and was obligated under section 38 to return this amount. The amount which is doubled is the \$362.50 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$725.00**.

#### Landlord's claim

Based on the testimony of the parties, and on preponderance of their submitted document evidence and testimony, I find that while the Act requires that a tenant must give a Notice to End a tenancy only in accordance with the Act, the Act does not attach a penalty for failing to do so, or automatically entitles the landlord to future rent. There is no provision in the Act whereby tenants who vacate without providing the required

Notice will be automatically held liable for loss of rent or revenue for the months following. However, Section 7 of the Act *does* provide as follows:

**7. 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.
- 7(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.

An application for loss must meet the above test. It is clear the tenant did not provide their Notice to End as prescribed by the Act nor in respect to a fixed term tenancy. I find it was available to the landlord to have provided more evidence or document evidence of their efforts to re-rent the unit after May 6, 2013, or at least as soon as the tenant vacated - leaving the landlord to definitively consider the tenancy at an end. The landlord has not provided sufficient evidence of their efforts to rent the unit for earlier than July 01, 2013. As a result, I find the landlord has not provided sufficient evidence they acted reasonably to mitigate or minimize their losses. I am not satisfied that the landlord has met the test established in section 7(2), and I therefore **dismiss** their claim for loss of revenue.

I find the parties agreed to the administration fee of \$125.00 if the tenant dissolved the tenancy earlier than the fixed term of the tenancy. I find the amount is not extravagant so as to be considered a penalty, and is not in the form of liquidated damages. As a result, I find the landlord is entitled to the **\$125.00** agreed service charge.

Residential Tenancy Regulation 7(1)(d) limits a landlord's claim for an administration fee for return of a tenant's cheque to not more than \$25.00. Even if I were to accept the Regulations extend to a pre-authorized payment arrangement, I find the landlord's agreement does not conform to the Regulations and is therefore unenforceable. As a result **I dismiss** this portion of the landlord's claim. As the landlord was partially successful in their application they are entitled to recover their filing fee of **\$50.00**.

Therefore: *Calculation for Monetary Order,*

tenant's original security deposit to tenant	\$362.50
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Double original security deposit to tenant	\$362.50
<i>landlord's award</i>	-\$ 125.00
<i>Landlord's filing fee</i>	-\$ 50.00
<b>Total monetary award for tenant</b>	<b>\$550.00</b>

### **Conclusion**

The tenant's application has been granted.  
The landlord's application, in part, has been granted

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$550.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

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: November 18, 2013

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Residential Tenancy Branch

