



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PENTICTON APARTMENTS LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MND, FF  
                                 MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Landlord and the Tenant. The Landlord applied for a Monetary Order for: unpaid rent or utilities; for damage to the rental unit; to keep the Tenant’s security deposit and to recover the filing fee for making the Application. The Tenant applied for the return of all or part of the security deposit.

The Landlord who was also representing the company named on the Landlord’s Application appeared for the hearing and provided affirmed testimony during the hearing. I accept that the Tenant had been served with the Notice of Hearing documents and written evidence by registered mail as evidenced by the Canada Post tracking numbers, and that this was done in accordance with the requirements of the *Residential Tenancy Act* (the “Act”) and the Rules of Procedure.

There was no appearance for the Tenants during the 30 minute duration of the hearing. After the hearing had concluded, I remained on the line with the Landlord and provided information to her with regards to her rights and obligations under the Act. At the end of this conversation and at the point the Landlord was dialing out of the hearing, the Tenant dialed into the conference call 42 minutes from the scheduled time it was to commence. As a result, I explained to the Tenant that the hearing had concluded and that a written decision would be issued to the parties as follows.

### Issue(s) to be Decided

At the start of the hearing the Landlord indicated that after considering her claim she only sought to keep the Tenant’s security deposit in the amount of \$350.00 in full satisfaction of her claim and withdrew the remaining portions for damage to the rental suite and the filing fee, which I dismiss accordingly.

Is the Landlord entitled to keep the Tenant's security deposit in full satisfaction of the Landlord's claim for **unpaid rent**?

Background and Evidence

The Landlord testified that this month to month tenancy started on October 1, 2012 and that she inherited this tenancy as a Landlord in August 2013. The Tenant paid a security deposit of \$350.00 on September 26, 2012 which the Landlord still retains. Rent for the suite was payable by the Tenant in the amount of \$700.00 on the first day of each month.

The Landlord testified that in the middle of January, 2014, she got a telephone call from the Tenant who wanted to leave the tenancy on February 1, 2014 as she had found another place to move to. The Landlord explained to the Tenant that she had to provide written notice and that it had to be a period of one full rental month of notice.

The Tenant proposed during the conversation that they would leave at the end of January, 2014 and would pay her half a month's rent for February, 2014 in the amount of \$350.00 and requested the Landlord to use their security deposit for the remainder outstanding for February, 2014 as they could not afford to pay for two places. The Landlord agreed to this but asked that the Tenant to provide written notice of the proposal and that written consent regarding the use of the security deposit for the remainder of February, 2014 rent.

The Tenant then provided the Landlord with a written notice, which was not dated, explaining that the Tenant was providing a mid month notice as of January 14, 2014 and that the premises will be vacated for February 1, 2014 at which point it will be available for re rental. The Landlord testified that this written notice from the Tenant was received on the last week of January, 2014 but did not clearly stipulate anything about the security deposit.

The Landlord testified that the Tenant provided her with a cheque for half a month's rent for February, 2014 and moved out of the unit by February 1, 2014. The Landlord testified that later in the day she met with the Tenant and had a discussion about the security deposit. During the conversation the Tenant signed over the security deposit in a "Security Deposit Statement" document which was provided as evidence. However, the document indicates that the Tenant only consented to \$105.00 being deducted from her security deposit and some of the other details were inconsistent.

The Landlord testified that she learnt from the Tenant and her boyfriend that they wanted their security deposit back and as a result, the Landlord made an Application to keep the security deposit on February 5, 2014 using the forwarding address which had been provided to the Landlord on the 'Security Deposit Statement' document.

The Landlord testified that she was unable to rent out the suite for February, 2014 but did so successfully for March, 2014.

### Analysis

I accept the undisputed evidence of the Landlord's agent that the Tenant provided a forwarding address on February 1, 2014 on the 'Security Deposit Statement' document. As a result, I find that the Landlord made the Application to keep the Tenant's security deposit within the allowable time limits stipulated by section 38(1) (d) of the Act.

Section 45(1) of the Act explains the Tenant's obligations when ending a month to month tenancy. The Act states that a Tenant **must** give the Landlord a notice of at least one **full rental month** before ending the tenancy and this **must** be done in writing as required by section 52 of the Act.

Section 21 of the Act also states that unless a Landlord gives written consent, a Tenant must not apply a security deposit or pet damage deposit as rent.

In this case, I find that the Tenant provided written notice, which was not dated, to the Landlord in January, 2014 which, had the notice complied with section 52(a) of the Act, would have allowed the Tenant to vacate the rental suite at the end of February, 2014 and still be responsible for February, 2014 rent. However, the Tenant vacated on February 1, 2014 after giving half of the rent to the Landlord in the amount of \$350.00 for February, 2014.

Section 45(1) of the Act is designed to give a Landlord sufficient notice that enables the rental unit to be re-rented for the following month after the notice period has expired. In this case, I find that giving a written notice in the latter part of the January month did not provide the Landlord sufficient notice for the rental suite to be reasonably expected to be rented for February, 2014 and therefore, I find that the Tenant is responsible for the other half of February, 2014 rent in the amount of \$350.00.

The Landlord withdrew her claim for damages to the rental suite and therefore, I did not make any findings in relation to the reporting requirements of section 23 and 24 of the Act which would have been considered for a claim for damages to the rental unit.

Conclusion

For the above reasons, I order the Landlord to retain the Tenant's security deposit in the amount of \$350.00 in **full** satisfaction of the Landlord's Application.

As the Tenant failed to appear on the scheduled time for the duration of the hearing in order to present the merits of her Application, I dismiss the Tenant's Application **without** leave to re-apply.

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: May 22, 2014

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Residential Tenancy Branch

