



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MNDC, MNSD, FF

### Introduction

This hearing concerns the landlord's application 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 & pet damage deposits; and recovery of the filing fee. The landlord and the landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing by way of registered mail to the forwarding address provided by the tenants, neither tenant appeared. Evidence provided by the landlord includes the Canada Post tracking number for the registered mail sent to each tenant. The Canada Post website informs that both items were "unclaimed by recipient," and that both items were later "successfully returned to the sender."

### Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on June 20, 2013. Monthly rent of \$1,100.00 is due and payable in advance on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$110.00 were collected. A move-in condition inspection report was completed with the participation of both parties.

By way of e-mail dated December 31, 2013 to "HY," the landlord's agent, the tenants gave notice to end tenancy effective February 01, 2014. As "HY" was absent on vacation, the e-mail was not opened until January 07, 2014. Rent was paid to the end of January 2014. In their e-mail to "HY" the tenants stated in part as follows:

...it looks like we found a place for February 1<sup>st</sup>, so we wanted to give you the proper notice, 1 month, even though nothing is confirmed on the new place!

Thereafter, “OP,” another agent acting on behalf of the landlord, contacted the tenants in January 2014 in order to confirm their intentions. “OP” testified that it was not until late in January 2014 when the tenants were able to confirm that, indeed, they would be vacating the unit at the end of January 2014. At that stage the landlord’s agent began on-line advertising for new renters. A move-out condition inspection report was completed on February 05, 2014, however, it does not bear the signature of either tenant. The tenants later provided a forwarding address on February 07, 2014,

The landlord filed an application for dispute resolution on February 19, 2014, and the unit was re-rented effective from March 01, 2014.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 45 of the Act speaks to **Tenant’s notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than the day in the 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.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant’s notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Further, clause #14 of the tenancy agreement addresses “Ending a Tenancy,” and reiterates the requirements related to giving notice which are set out in section 52 of the Act. I also note that at the bottom of each page of the tenancy agreement there is provision for both parties to acknowledge the requirements set out on that particular page by way of initialling boxes. In this manner, without exception, the requirements described on each page have been acknowledged by both parties.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord and the landlord’s agent, I find that notice provided by the tenants does not comply with either the statutory provisions in section 52 of the Act, or the related terms for “Ending a Tenancy,” which are clearly set out in the tenancy agreement. I also find there is no evidence that the parties had a well established pattern of communicating with each other by e-mail. Further, I am satisfied that the landlord undertook to mitigate the loss of rental income by advertising for new renters immediately after such time as the tenants confirmed their intentions to vacate the unit at the end of January 2014.

In the result, I find that the landlord has established entitlement to a claim of \$1,100.00 which reflects loss of rental income for February 2014, in addition to recovery of the \$50.00 filing fee [**total: \$1,150.00**]. I order that the landlord retain the security deposit of \$550.00 and the pet damage deposit of \$110.00 [**total: \$660.00**] I grant the landlord a **monetary order** for the balance owed of **\$490.00** (\$1,150.00 - \$660.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$490.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and 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: June 09, 2014

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Residential Tenancy Branch

