



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNSD FF

### **Introduction**

This hearing was convened in response to cross- applications by the landlord and the tenant under *the Residential Tenancy Act* (the Act). The landlord sought loss of revenue in the amount of \$695.00 and to retain the security and pet damage deposits in satisfaction of revenue loss. The tenant sought the return of their deposits and double the amounts as prescribed under the Act.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties acknowledged receiving the evidence of the other. The parties were also given opportunity to orally provide their respective evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed relevant testimony in this matter is as follows. The tenancy started May 03, 2013 and ended April 01, 2014. Under the tenancy agreement rent in the amount of \$695.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and a pet deposit from the tenant in the amount of \$347.50 respectively, which the landlord retains in trust. On March 03, 2014 the tenant provided the landlord with their written Notice to Vacate at month's end

for the reason they had, “found other rental accommodations”. The tenant highlighted that the *unstated reason* was because of an allergy to mold which had been previously found behind a baseboard in the bathroom and remediated. The tenant claims that the allergy prevented them from providing earlier notice to the landlord. None the less, despite the tenant’s late notice to vacate, the landlord acted on the tenant’s Notice and immediately placed on-line advertisements on their corporate website, Kijiji website, and also placed their rental board displaying the suite’s availability.

The landlord testified they received enquiries to their advertisements but that none of the viewers resulted in a rental agreement for April 2014. The parties agreed that the rental unit was viewed throughout the month of March 2014 – at times multiple viewings in one day. The landlord testified the unit was re-rented for May 2014.

The tenant argues that the unit was unappealing to prospective renters because of its size, shower only, and the location of the refrigerator, however acknowledged that these issues did not prevent them from renting the unit a year earlier.

### **Analysis**

On preponderance of all the evidence in this matter, I have reached a Decision upon the following findings.

I find the tenant ended the tenancy without providing the landlord with the prescribed Notice to End the tenancy in accordance with **Section 45** of the Act, which in relevant part states as follows,

#### **Tenant’s notice**

**45** (2) 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 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.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

I place no evidentiary weight on the tenant's reasons for providing their Notice to Vacate later than required by the Act. On balance of probabilities I find it was available to the tenant to provide their Notice 3 days earlier. None the less, I find that while the Act requires tenants to give one *full month's* notice that they are vacating, the Act does not automatically entitle the landlord to loss of revenue. That is, there is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice.

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.

As a result of the tenant's non-compliance with the tenancy agreement or the Act, I accept the landlord's evidence that under the circumstances with which they were presented the landlord took immediate steps and did what was *reasonable* to minimize and avert a loss of revenue for April 2014. I find the landlord has met the above test for loss, and as a result are owed compensation for loss of revenue for April 2014 in the amount of **\$695.00**.

I find the landlord made their application within 15 days of the end of the tenancy as prescribed by Section 38 of the Act. Therefore, the tenant is not entitled to double the amount of their security deposit, and **I dismiss** their application in its entirety. The landlord is entitled to recovery of the \$50.00 filing fee. The deposits of this tenancy will be off-set from any award made herein.

***Calculation for Monetary Order***

loss of revenue for April 2014	\$695.00
filing fee	50.00
<i>Less security deposit / pet damage deposit</i>	<i>-695.00</i>
<b>Total monetary award to landlord</b>	<b>\$50.00</b>

**Conclusion**

**I Order** that the landlord may retain the security deposit and pet damage deposit in the sum amount of \$695.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$50.00**. 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: July 28, 2014

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Residential Tenancy Branch

