



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNSET PARK APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MND, MNR, MNDC, FF

### Introduction

In the first application the tenants seek to recover a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

In the second application the landlord seeks to recover lost rental income and damages for carpet cleaning and pest control.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either side is entitled to a monetary award?

### Background and Evidence

The rental unit is a one bedroom apartment in a 155 unit apartment building. The tenancy started in November 2012. The rent was \$795.00 per month. The landlord holds a \$397.50 security deposit.

On March 1<sup>st</sup>, 2014 the tenants gave the landlord written notice that they would be vacating the premises on March 30<sup>th</sup>. They left on March 30<sup>th</sup> and provided the landlord with a forwarding address by text message on April 3<sup>rd</sup> and on paper early in April.

The landlord re-rented the premises effective May 1<sup>st</sup>. The landlord’s representative says that significant cleaning and painting was required after the tenants left but that the incoming tenant did it at no charge to the landlord.

The landlord’s representative testifies that the carpet required professional cleaning at a cost of \$50.00 and that this apartment, along with another nearby, required the services of a pest control company at a cost of \$399.00, half of which the landlord claims here.

The tenants say they would have cleaned the carpet but their vacuum wasn't working. They say they have had a bed bug problem since shortly after move in in late November 2012. The pest control people were attending then and the problem never completely went away. They deny being the cause of the bed bug problem.

The tenants argue that they gave the required one month's notice and don't owe rent.

### Analysis

It is apparent that the tenants did not give the required one month notice to end their tenancy. Section 45(2) of the *Act* provides:

- (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 order for the tenants' notice to have been effective at the end of March, they would have had to give it to the landlord on a "day before the day in the month ... that rent is payable..." In this case that means they would have had to give their notice before March 1<sup>st</sup>. The notice they did give could only have been lawfully effective at the end of the following month, April, and I find that they are responsible to the landlord for the April rent of \$795.00.

I grant the landlord its \$50.00 claim for carpet cleaning charges. The Residential Tenancy Policy Guideline 1, "Landlord and Tenant - Responsibility for Residential Premises" states that a tenant is expected to have carpets shampooed after a tenancy of one year unless the tenant can show it was not required. The tenants have not refuted that need here.

I dismiss the landlord's claim for pest control. Given that the bugs were reported by the tenants soon after the tenants moved in and given that a neighbouring apartment was treated at the same time as this rental unit after the end of the tenancy, it has not been proven that the pests were introduced by these tenants or their guests as opposed to having been brought into the building by some other tenant or his or her guests.

In result, the landlord is entitled to a monetary award of \$845.00 plus the \$50.00 filing fee.

At the same time the tenants are entitled to the credit of double the \$397.50 security deposit. Section 38 of the *Act* is clear; where a tenancy has ended and the landlord does not have a tenant's written authorization to keep any part of a deposit, then, upon receiving that tenant's forwarding address in writing, a landlord has fifteen days to either repay the deposit or make application for dispute resolution to keep all or a portion of it. Failure to comply results in a doubling of the deposit amount.

In this case the landlord's application was not made until June 10, 2014, well outside the fifteen day period.

The landlord's representative was of the view that she should repay the deposit to the welfare office because that is where the money originally came from. As stated at hearing, no matter what the origin of the funds, the landlord's contract, the tenancy agreement, is with the two tenants, not the welfare office, and it is by that contract that the landlord must account for the deposit to the tenants and no others.

### Conclusion

The landlord will have a monetary order against the tenants for the \$100.00 remainder of its award.

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 21, 2014

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Residential Tenancy Branch

