



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant: MNDC MNSD FF  
For the landlords: MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of all or part of the security deposit or pet damage deposit in the amount of \$6,919.18.

The landlords applied for a monetary order for unpaid rent or utilities, to keep all or part of the security deposit or pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

### Preliminary and Procedural Matters

On February 12, 2014, an Arbitrator granted an adjournment for both applications and issued two Orders which are described in the February 12, 2014 Interim Decision, which should be read in conjunction with this Decision.

The reconvened hearing was scheduled for Tuesday, May 20, 2014 at 1:30 p.m., Pacific Time. Landlord “PK” attended the reconvened hearing, while tenant “MD” did not attend the reconvened hearing. In addition, the tenant’s late documentary evidence was not considered as it was not served in accordance with the rules of procedure. As the tenant did not attend the reconvened teleconference hearing to present the merits of his application, the tenant’s application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed.

I note that the landlord stated that four or five days before the reconvened hearing, he received an e-mail from the tenant requesting another adjournment. The landlord stated that he would not agree to a second adjournment and was ready and willing to proceed with the reconvened hearing. As a result, the hearing continued with consideration of the landlords’ application.

The hearing process was explained to landlord “PK”, and the landlord was given an opportunity was to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

#### Background and Evidence

The landlord testified that a fixed term tenancy agreement began on May 1, 2013 and reverted to a periodic, month to month tenancy agreement after August 31, 2013. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy, which the landlords continue to hold.

The landlord testified that the tenant vacated the rental unit on October 31, 2013 after the landlord received written notice from the tenant on September 30, 2013. The landlord questioned the content of the tenant’s written notice to end the tenancy as the landlord stated it was confusing. The landlord stated that due to the confusing wording provided by the tenant in the tenant’s written notice to end the tenancy, the landlords suffered a loss of rent for the month of November 2013. The landlords are seeking \$1,200.00 for loss of November 2013 rent revenue due to the confusing notice to end the tenancy served by the tenant.

The written notice to end the tenancy from the tenant dated September 30, 2013 reads in part:

“...I hereby give notice to end my tenancy at [rental unit address] and to vacate on 31 October 2013.

I would appreciate if you continue to grant me first refusal during the period until 21 October 2013, and your flexibility in considering whether to allow me to revoke this notice to end tenancy and extend the current lease on a month to month basis...”

[reproduced as written]

In addition to the above, the landlord stated that they did not know until approximately a week before the tenant vacated the rental unit that the tenant was actually going to vacate the residence as he spoke of subletting the rental unit up until about one week before he vacated the rental unit. The landlord stated that they were unable to secure a new tenant for the month

of November 2013 as a result and suffered a loss of \$1,200.00 rent for the month of November 2013.

### Analysis

Based on the documentary evidence, the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Landlords' claim for loss of November 2013 rent and the filing fee** - The landlords have claimed \$1,200.00 for loss of November 2013 rent revenue due to insufficient notice provided by the tenant. Section 45 of the *Act* states in part:

**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 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*].

[my emphasis added]

Section 52 of the *Act* states:

**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.

[reproduced as written]

Based on the above, **I find** the tenant breached section 45 and 52 of the *Act* by providing a notice in which the effective date of October 31, 2013 was confusing given the following wording provided by the tenant which reads:

“...I would appreciate if you continue to grant me first refusal during the period until 21 October 2013, and your flexibility in considering whether to allow me to revoke this notice to end tenancy and extend the current lease on a month to month basis...”

I find that due to the above-noted wording provided by the tenant, that the landlords were unable to rely on the tenant’s notice to end the tenancy effective October 31, 2013.

Based on the above, I find the landlords have met the burden of proof as the tenant breached section 45 and 52 of the *Act* by provided a confusing notice to end tenancy which included a request to potentially revoke the notice to end tenancy and extend the lease. As a result, I grant the landlords \$1,200.00 for loss of November 2013 rent revenue.

As the landlords’ claim had merit, I grant the landlords the recovery of their filing fee in the amount of \$50.00.

The landlords continue to hold the tenant’s security deposit of \$600.00, which has accrued no interest since the start of the tenancy.

**I find** that the landlords have established a total monetary claim of **\$1,250.00** comprised of \$1,200.00 in loss of November 2013 rent revenue, plus recovery of the \$50.00 filing fee. **I ORDER** the landlords to retain the tenant’s full security deposit of \$600.00 in partial satisfaction of the landlords’ claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$650.00**. This order must

be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The application of the tenant has been dismissed in full, without leave to reapply.

The landlords established a total monetary claim of \$1,250.00 have been ordered to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlord's claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$650.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 3, 2014

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Residential Tenancy Branch

