



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Salish Court Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### 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 fixed term of tenancy was from March 08, 2013 to February 28, 2014. Monthly rent of \$960.00 was due and payable in advance on the first day of each month, and a security deposit of \$480.00 was collected.

By letter dated September 06, 2013 the tenant informed the landlord of her view that the landlord had committed a "breach of a material term" of the tenancy agreement, and stated that if the alleged breach was not corrected by September 12, 2013, she would end her tenancy.

Subsequently, by letter dated September 13, 2013 the tenant gave notice to end tenancy effective October 01, 2013. In this letter the tenant also informed the landlord of her forwarding address for the purposes of repayment of her security deposit. Thereafter, the tenant vacated the unit on October 01, 2013.

The landlord testified that online advertising for new renters commenced after the tenant had vacated the unit, and that new renters were found effective from November 01, 2014.

Further to the above, it is noted that in response to the tenant's application a hearing was held on June 20, 2014. In the result, by decision dated July 08, 2014 a monetary order was issued in favour of the tenant for \$960.00. The monetary order reflects the double return of the tenant's security deposit pursuant to the provisions in section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**.

### Analysis

Section 45 of the Act addresses **Tenant's notice**, in part:

45(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.

Section 7 of the Act addresses **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.

(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.

Based on the documentary evidence and testimony, I find that the tenant did not end the fixed term tenancy in accordance with the above statutory provisions. Specifically, the tenancy was ended "earlier than the date specified in the tenancy agreement as the end of the tenancy."

While I find that the landlord undertook to mitigate the loss of rental income by advertising for new renters, I note that advertising was not begun until after the tenant vacated the unit. In the circumstances, I consider that advertising could reasonably have begun very shortly following the landlord's receipt of the tenant's notice by letter dated September 13, 2013. In the result, I find that the landlord has established entitlement to loss of rental income for October 2013 in the limited amount of **\$480.00**, or ½ month's rent (\$960.00 ÷ 2).

In relation to the landlord's application to retain the tenant's security deposit, as noted earlier, the disposition of the security deposit was previously decided in the decision issued by date of July 08, 2014. In this regard, "Black's Law Dictionary" defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the foregoing, the landlord's application to retain the tenant's security deposit is hereby dismissed.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$530.00** (\$480.00 + \$50.00). Should it be necessary, this order may be served on the tenant, 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: September 18, 2014

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Residential Tenancy Branch

