



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OPR, MNSD, FF, O

### Introduction

In the first application the tenant seeks to recover a \$600.00 security deposit and a \$600.00 pet damage deposit, both doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

In the second application the landlord seek to recover unpaid November 2014 rent. Her application discloses a request for an order of possession but she has now regained possession.

### Issue(s) to be Decided

Do the relevant facts presented at hearing show on a balance of probabilities that either party is entitled to any of the relief requested?

### Background and Evidence

The rental unit is a three bedroom duplex. The tenancy started October 1, 2014. The monthly rent was \$1200.00. A fixed term tenancy agreement of six months duration, perhaps a “rent to own” agreement had been prepared but was not presented at the hearing.

In early October the tenant says she discovered mould in the premises and her doctor indicated to her it would be best to move. She wrote the landlord on October 8, 2014 stating she is allergic to mould spores and has had a hard time breathing since moving in. She stated in the letter that she would vacate as soon as she found someplace else to live.

The landlord responded in a letter dated October 10, saying she was unaware of there ever being a mould problem in the premises and pointing out that the tenant’s notice would be effective November 30, 2014.

The tenant vacated the premises by the end of October and provided the landlord with a forwarding address in writing on November 2, 2014.

The tenant brought her application on November 24, 2014.

By application made December 15, 2014, the landlord brought her claim.

The tenant provided no evidence about mould contamination but for her October 8 letter.

### Analysis

There is no concrete evidence upon which to base a finding that the premises were reasonably uninhabitable because of mould. The tenant has not shown lawful justification to end her tenancy early for that reason.

Section 45 (1) of the *Act* provides:

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.

By s. 53 (2) of the *Act*, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The tenant's notice, given October 8<sup>th</sup>, could only be effective to end the tenancy on November 30, 2014 and automatically changed to that date.

It follows that the tenant was responsible to pay the \$1200.00 rent that came due on November 1, 2014. The landlord could not reasonably re-rent the premises until after expiry of the notice period.

By section 38 of the *Act* a landlord who fails to repay a deposit or make an application to keep it within fifteen days after the end of a tenancy and receipt of a tenant's

forwarding address must account to the tenant for an amount double the deposit amount.

In this case the fifteen day period commenced to run from November 30, 2014, the last date of the tenancy. The landlord's application was made on December 15<sup>th</sup>, within the period imposed by the *Act* and the tenant is not entitled to the benefit of the s. 38 doubling provision.

### Conclusion

The landlord is entitled to a monetary award of \$1200.00 plus the \$50.00 filing fee for her application. I authorize the landlord to keep the \$1200.00 of deposit money in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$50.00.

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: January 26, 2015

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Residential Tenancy Branch

