



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Apartments R Us  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on November 15, 2014 as a month to month tenancy for the monthly rent of \$1,295.00 due on the 1<sup>st</sup> of each month with a security deposit of \$647.00 paid. The parties also agree that the tenant vacated the rental unit on or before November 30, 2014.

The landlord submits that he received notice from the tenant on November 24, 2014 by email that he intended to vacate the rental unit by November 30, 2014. The landlord submits that he was unable to re-rent the unit until January 1, 2015 despite ongoing advertising on his own website and on Craigslist. The landlord seeks compensation in the amount of \$1,295.00 for lost revenue.

The tenant submits that he felt that he should not have to stay in a residential property where the landlord had failed to provide and repair a number of issues. The tenant submits that after he moved into the rental unit he discovered the following problems:

- The tenant was being disturbed by other residents in the residential property;
- The intercom did not function;
- Many appliances did not function (i.e. lamp; blue-ray player);

- Main entrance door was not closing properly;
- Bird excrement on the window screen;
- Construction would be completed “shortly after I moved in” but it was not;
- The doors would have dampers put on them;
- The stairs would need repair; and
- There were people smoking in what the tenant thought was a non-smoking building.

The parties agree the tenant provided the landlord by text message complaints on November 21, 2014 and that the tenant provided his email notice to end the tenancy on November 24, 2014. The tenant confirmed that in none of the correspondence did he advise that he felt that failure to accommodate these requests constituted a breach of a material term of the tenancy and that if the landlord did not repair them the tenant would move out of the rental unit.

### Analysis

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

By agreement by both parties I find that the notice issued by the tenant on November 24, 2014 provided the landlord with only 6 days' notice of the tenant's intent to end the tenancy and as such does not comply with Section 45(1).

From the tenant's testimony I find that despite having several complaints regarding the condition of the rental unit and residential property and noise disturbances, I find that the tenant has failed to establish the landlord has breach a material term. Even if the landlord had breached a material term, the tenant's own testimony confirms that he did not provide the landlord with any time to make any repair or deal with any of the complaints.

As such, I find the tenant cannot rely upon Section 45(3) as a ground to end the tenancy without notice as is required under Section 45(2). Therefore, I find the earliest the tenancy by the tenant giving notice to end the tenancy would have been December 31,

2014. As a result, I find the tenant is responsible for the payment of rent for the month of December 2014 subject only to the landlord's obligation to mitigate his losses.

Based on the undisputed testimony of the landlord I find the landlord took reasonable steps to mitigate his losses by advertising the availability of the rental unit in a timely manner.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,345.00** comprised of \$1,295.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$647.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$698.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 03, 2015

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Residential Tenancy Branch

