



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order for unpaid rent pursuant to Sections 44, 45 and 67 as the tenant gave insufficient notice to end the tenancy;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

The tenant did not attend. The landlord gave sworn testimony that they served the Application for Dispute Resolution by registered mail. It was verified online as successfully delivered. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

The tenant gave notice on November 15, 2014 to end the tenancy on December 15, 2014. Has the landlord proved on a balance of probabilities that this was insufficient notice to end the tenancy and they are entitled to a Monetary Order for rental arrears and filing fee?

### **Background and Evidence:**

Only the landlord attended although the tenant was served with the Application/Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on December 1, 2013 on a fixed term lease to November 30, 2014 for not less than 12 months. Rent was \$850 and a security deposit of \$425 and a pet damage deposit of \$200 were paid. The tenant gave notice to end the tenancy on November 15, 2014 to end it on December 15, 2014 and the landlord informed them that they were required to give a full rental month's notice. However, they got permission to end the tenancy on December 15, 2014 but did not pay rent for December. The landlord requests a monetary order for \$425 for the half month rent owed for December 2014.

The tenants submitted no documents to dispute the claim.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

Sections 44 and 45 of the Act provide how a tenancy ends by Notice given by one party to the other. Section 45 specifically addresses the Notice by a tenant. It 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.*

I find as fact that the tenants had a fixed term lease expiring on November 30, 2014 which then would go to month to month according to section 44(3) of the Act. Rent was payable on the first of each month. I find that the tenants gave notice to end their tenancy on November 15, 2014. Based on section 45 above, I find that their Notice given in November would not be effective until December 31, 2014 which is the day before the day in the month that rent is due (s.45 (1) (b)).

Although I find as fact that the tenant wrote a letter on November 15, 2014 to say they had permission from two staff to stay until December 15, 2014, I find this does not alter their obligations under the Act to pay rent for the month of December 2014 unless the landlord was able to mitigate his damages by re-renting. I find the landlord did not re-rent for December but is claiming only one half of December's rent.

I find the landlord is entitled to a monetary order for \$425 for rent for December 1-15, 2014.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security and pet deposits to offset the rental amount owing and to recover filing fees paid for this application.

Rent owed Dec. 1-15, 2014	425.00
Filing fee	50.00
Less Security and Pet Deposits (no interest 2013-14)	-625.00
Amount to be refunded to Tenant	-150.00

**I HEREBY ORDER THE LANDLORD to refund the balance of \$150 from the deposits to the tenant forthwith.**

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 05, 2015

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Residential Tenancy Branch