



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF  
MNDC, MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee.

The landlords attended and gave affirmed testimony. The tenant did not appear.

The landlords testified that the application for dispute resolution and notice of hearing ("hearing package") was served on the tenant by way of registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered" on September 30, 2014. Based on the documentary evidence and the affirmed / undisputed testimony of the landlords, I find that the tenant was served in accordance with sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents**, and **When documents are considered to have been received**.

The landlords also testified that they were served with the tenant's hearing package.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is 1 of what are 2 separate rental rooms located in the basement portion of a 3 level house. The landlords reside in the 2 upstairs levels, and have separate kitchen and bathroom facilities from the tenants.

Pursuant to a written tenancy agreement the 6 month fixed term of tenancy is from July 01 to December 29, 2014. Monthly rent of \$515.00 is due and payable in advance on the first day of each month, and a security deposit of \$250.00 was collected. While a "Check list" was submitted in evidence which shows tick marks beside certain rooms or items, a move-in condition inspection report as such was not completed.

After giving oral notice, the tenant vacated the unit on September 01, 2014. Payment of rent was limited to the months of July and August 2014. A move-out condition inspection report was not completed. The landlords testified that within days following the tenant's departure, advertising was begun for a new tenant by way of at least 1 local newspaper and online. A new tenant was found effective from November 01, 2014.

By letter dated September 03, 2014, the tenant informed the landlords of her forwarding address, and sought the full repayment of her security deposit. Thereafter, the landlords' application for dispute resolution was filed on September 11, 2014, while the tenant's application was filed on September 19, 2014.

### Analysis

At the outset, the attention of the parties is drawn to the following particular legislation:

### **ACT**

Section 25: **Condition inspection: start of tenancy or new pet**

Section 45: **Tenant's notice**

Section 52: **Form and content of notice to end tenancy**

Section 7: **Liability for not complying with this Act or a tenancy agreement**

Section 35: **Condition inspection: end of tenancy**

Section 37: **Leaving the rental unit at the end of a tenancy**

### **REGULATION**

**Part 3 – Condition Inspections** (Sections 14 to 21)

Based on the documentary evidence and the affirmed / undisputed testimony of the landlords, and in consideration of the relevant legislation, the various aspects of the applications and my findings are set out below.

### **LANDLORDS**

**\$1,030.00:** *(2 x \$515.00) loss of rental income for September & October 2014*

Section 45(2) of the Act provides as follows:

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.

I find that the tenant did not end the fixed term tenancy in accordance with the Act. Specifically, I find that the tenant ended the tenancy “earlier than the date specified in the tenancy agreement as the end of the tenancy.” I also find that the landlords undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlords have established entitlement to the full amount claimed.

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**\$126.00:** *cleaning in the unit*

In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

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**\$92.00:** *cost of advertising for new renter*

Related documentary evidence is limited to a copy of one newspaper advertisement. There are no receipts or other details related to frequency of advertisements or identification of newspapers used for advertising. In the result, I find that the landlords have established entitlement to nominal compensation limited to **\$25.00**.

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**\$11.34:** *registered mailing costs*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

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**\$50.00:** *filing fee*

As the landlords have achieved a measure of success with the main aspects of the application, I find that they have also established entitlement to recovery of the filing fee.

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**Sub-total entitlement: \$1,105.00.**

I order the landlords to retain the security deposit of **\$250.00**, and I grant the landlords a **monetary order** for the balance owed of **\$855.00** (\$1,105.00 - \$250.00).

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## TENANT

In consideration of the tenant's absence from the hearing which was scheduled in response to applications filed by both parties, and in view of my finding that the tenant was duly served with the landlords' hearing package, I find that the tenant's application must be dismissed.

## Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$855.00**. 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: April 15, 2015

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Residential Tenancy Branch

