



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

At the end of the hearing the landlord requested an adjournment because he had witness who was out of the country and could not attend this hearing. The landlord could not provide a reason as to why his witness could not call into the hearing from the country they were in. I dismissed the landlord's request for adjournment.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent and for return of the security deposit, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on September 2, 2014 for an 11 month and 23 day fixed term tenancy beginning on September 7, 2014 for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00.

The tenant submitted that she signed the tenancy agreement with the landlord and paid him rent in the amount of \$800.00. She stated that she paid rent first instead of the security deposit because it is easier to obtain a security deposit from her welfare agency if she has already paid rent.

The landlord provided into evidence a "Shelter Information" document that contains a receipt for \$800.00 for rent. The landlord testified that they had agreed upon \$800.00 for September because the tenant was not going to move in until September 7, 2015.

The tenant states that she did not move into the rental unit because after she signed the agreement she decided that the rental unit was not suitable for her or her daughter who both suffered from respiratory problems.

### Analysis

While the tenant applied for the return of a security deposit I find, from the tenant's own testimony, that she did not pay a security deposit and as such I dismiss her claim to have the landlord return the deposit.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

As such, despite not moving in to the rental unit after signing the tenancy agreement the tenant became obligated to provide a notice to end tenancy as is required under Section 45 of the *Act*.

Section 45(2) stipulates that a tenant may end a fixed term 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; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; 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.

As the tenant has provided no evidence that she determined that the landlord had breached a material term of the tenancy agreement I find the earliest the tenant could have ended the tenancy was at the end of the fixed term or August 31, 2015. As such, I find the tenant owed the landlord rent for the agreed upon amount for September 2014.

I also note that the landlord remains at liberty to file his own Application for Dispute Resolution to claim any other lost revenue as a result of the tenant's failure to provide sufficient notice to end the tenancy pursuant to Section 45 of the *Act*.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

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 30, 2015

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Residential Tenancy Branch

