



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MNR, MNDC, OPR, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for loss of income, liquidated damages, carpet cleaning, lock replacement and a move out fee. The tenant applied for a monetary order for the return of the security deposit, the cost of a fan installed by her and the return of rent for August 2015. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing, the parties informed me that the tenant had moved out and therefore the landlord did not require an order of possession.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, liquidated damages, carpet cleaning, lock replacement and move out fee? Is the tenant entitled to the return of the security, rent for August and the cost of a fan installed by her?

### **Background and Evidence**

The tenancy started on July 17, 2015 for a fixed term of one year with an effective end date of July 31, 2015. The monthly rent was \$1,100.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$550.00.

A tenancy agreement was filed into evidence. A term in the agreement requires the tenant to pay liquidated damages in the amount of \$550.00, in the event that the tenant ends the tenancy prior to the end date of the fixed term. During the hearing the landlord agreed to withdraw her claim for liquidated damages.

The tenant stated that on August 29, 2015, she found dead mice behind the stove. The tenant contacted the landlord that day, to report the problem. A pest control technician visited the unit the next day and carried out treatment.

The tenant stated that on August 29, she informed the landlord that she wanted to end the tenancy effective August 30, 2015, because she had new born premature twins and did not want to expose them to problems associated with the mice and/or the treatment of the problem.

The tenant moved out shortly after and returned the keys to the landlord on September 07, 2015. The tenant stated that since the apartment was not safe for her and her family, she was claiming the return of rent paid for August 2015. The tenant did not pay rent for September 2015.

The landlord stated that she advertised the availability of the rental unit online and in a popular Chinese newspaper. A new tenant was found for October 01, 2015. The landlord is claiming a loss of income for September.

The landlord is claiming the following:

1.	Loss of income	\$1,100.00
2.	Move out fee	\$50.00
3.	Replacement of missing lock	\$73.50
4.	Carpet cleaning	\$99.75
5.	Filing fee	\$50.00
	Total	<b>\$1,373.25</b>

The tenant stated that she installed a fan inside the rental unit and was requesting the return of the fan or to be reimbursed for the cost of the fan. The tenant did not provide a receipt but filed information on what a similar fan would cost. The landlord agreed to cover the cost of the fan.

The tenant admitted that she had removed a lock from one of the doors in the rental unit and agreed to return the lock to the landlord. The tenant stated that she had cleaned the rental unit prior to moving out and disputed the landlord's claim for the cost of carpet cleaning. The tenant also added that there were stains on the carpet at the start of tenancy and when she notified the landlord, the landlord agreed to pay for the cost of renting a carpet cleaning machine.

The tenant is claiming the following:

1.	Return of the security deposit	\$550.00
2.	Cost of fan	\$165.00
3.	Return of rent for August	\$1,100.00
4.	Filing fee	\$50.00
	Total	<b>\$1,865.00</b>

Attempts were made to mediate a settlement between the two parties. The landlord agreed to waive the liquidated damages and was even prepared to waive a portion of her claim for loss of income. The tenant was adamant about her claim and refused to adjust the amount of her claim by accepting the landlord's offer.

### **Analysis**

#### **Landlord's application:**

The parties entered into a fixed term tenancy agreement on July 17, 2014 and therefore the tenant was bound by section 45(2) of the *Residential Tenancy Act*.

Section 45(2) of the *Residential Tenancy Act* states that 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 on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that on August 29, 2015, the tenant gave the landlord verbal notice to end the tenancy which was followed by a written notice on September 07, 2014. The tenant stated that she moved out of the rental unit before September 01, 2014.

The tenant cited the mice problem as the reason for ending the tenancy prior to the end date of the fixed term. However, the problem was detected on August 29, 2014 and the tenant informed the landlord of the problem and her intentions to end the tenancy on the same day. The landlord stated that on August 29, 2015, the tenant informed her that she was prepared to move out the next day, on August 30, 2015.

I find that the tenant moved out even though the landlord acted on the issue within one day. I further find that the landlord acted responsibly and responded to the tenant's complaint in a timely manner. However, despite the landlord's actions to treat the rental unit, by using the services of a professional pest control company, the tenant moved out on or before September 01, 2014.

Based on the testimony of both parties and the dates of the detection of the mice problem and the tenant's verbal notice to end tenancy, I find on a balance of probabilities that it is more likely than not that the tenant had decided to move out prior to the detection of the mice problem.

The tenant's notice to end tenancy was dated September 07, 2015 and states "*We had left the apartment before September 1<sup>st</sup>, 2014*".

Since the tenant was in a fixed term tenancy, she ended the tenancy prior to the end date and also ended the tenancy without giving one clear month of notice. Therefore I find that the tenant is responsible for the loss of income suffered by the landlord.

The landlord's claim is subject to the statutory duty to mitigate the loss by attempting to re-rent the premises. Based on the testimony of the landlord I find that the landlord attempted to mitigate her losses by advertising the vacancy. The landlord was successful in finding a tenant for October 01, thereby mitigating her losses to the equivalent of rent for the month of September. Accordingly I award the landlord \$1,100.00 towards the loss she incurred.

The landlord did not file any proof of having paid the move out fee and accordingly her claim for \$50.00 is dismissed. The tenant agreed to return the lock and therefore the landlord's claim for the cost of replacing the lock is dismissed.

*Residential Tenancy Policy Guideline#1* addresses the responsibility for the residential premises. With regard to carpets, the guideline states:

*Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.*

The tenant stated that she had cleaned the carpet prior to moving out and since the tenancy was barely two months old, I find that the landlord is responsible for steam cleaning the carpet. Accordingly the landlord's claim for \$99.75 is dismissed.

The landlord has proven most of her claim and therefore I award the landlord the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Loss of income	\$1,100.00
2.	Move out fee	\$0.00
3.	Replacement of missing lock	\$0.00
4.	Carpet cleaning	\$0.00
5.	Filing fee	\$50.00
	Total	<b>\$1,150.00</b>

**Tenant's application:**

The landlord agreed to compensate the tenant \$165.00 for the cost of the fan installed by the tenant in the rental unit.

Based on the testimony of both parties, I find that the landlord acted responsibly. The tenant reported the mice problem at the end of August and the landlord responded immediately. Accordingly I find that the tenant has not proven her claim for the return of rent for August 2014. The tenant's claim for \$1,100.00 is dismissed.

The tenant has proven a portion of her claim and therefore is entitled to the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	Return of the security deposit	\$550.00
2.	Cost of fan	\$165.00
3.	Return of rent for August	\$0.00
4.	Filing fee	\$50.00
	Total	<b>\$765.00</b>

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$385.00 which consists of difference between the established entitlements of the parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the **\$385.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of **\$385.00**.

I order the tenant to return the lock to the landlord within 15 days of receipt of this decision. If the tenant does not comply, the landlord may make application to recover the cost of replacing the lock.

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

