



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BABIC ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 22, 2016. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there a loss or damage to the Landlord and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on February 1, 2015 as a 1 year fixed term tenancy with an expiry date of February 1, 2016 and then continued on a month to month basis. Rent was \$925.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$925.00 on January 26, 2015. A move in condition inspection report was completed on January 26, 2015 and a move out condition inspection report was completed on April 5, 2016. The Tenant did not agree with the move out condition inspection report. The Tenant said the Landlord wrote on the report the blinds were damaged after the report was completed. The Landlord said that was not the case but the Tenant did damage the blinds. The Landlord continued to say because there is differing view on the blinds the Landlord said he is willing to withdraw the claim of \$75.00 for the blinds to be cooperative.

The Landlord continued to say the Tenant gave him written notice on March 10, 2016 that she was moving out April 1, 2016. The Landlord said this is not proper notice. The Landlord said he rented the unit on April 15, 2016. This was the earliest possible date to rent the unit and as a result the Landlord is requesting the Tenant pay the ½ month's rent from April 1, 2016 to April 15, 2016 in the amount of \$462.50 because of the incorrect notice to end the tenancy.

The Tenant said the Landlord did renovations in the unit from April 4, 2016 to April 12, 2016 so the Landlord had no intention of renting the unit for April 1, 2016. The Tenant said she does not think she is responsible for rent when the Landlord is doing renovations and the unit cannot be rented out. The Tenant said the unit could not be rented from April 4, 2016 to April 12, 2016 because of renovations to the unit.

The Landlord responded to the Tenant saying he advertised the unit starting March 11, 2016 and April 15, 2016 was the earliest he could rent the unit. The Landlord continued to say that he did renovate the main bathroom from April 4, 2016 to April 12, 2016. The Landlord said he had not planned to renovate before the Tenant gave notice to move out but he had an opportunity to renovate between the Tenant moving out and the new tenant moving in on April 15, 2016.

The Tenant said the Landlord chose to rent the unit on April 15, 2016 so he could do the renovations.

The Landlord continued to say the tenancy agreement has a clause that the Tenant had to clean the carpets when they moved out or \$80.00 would be deducted from the security deposit. The Landlord said the carpets were not cleaned so he is requesting \$80.00 for carpet cleaning.

The Tenant said she agrees to the \$80.00 deduction from the security deposit for carpet cleaning.

In closing the Tenant said she has told the truth and she believes all she owes the Landlord is for the carpet cleaning.

The Landlord said in closing that the Tenant did not give him proper notice to move out therefore the Tenant owes ½ a month's rent in the amount of \$462.50.

### Analysis

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

Further section 45 of the Act says a Tenant may end a period term tenancy with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

I accept the Landlord's testimony and evidence that the Tenant did not give the Landlord proper written notice to end the tenancy. The Tenant gave the Landlord written notice on March 10, 2016 to end the tenancy on April 1, 2016. This is not one full month prior to the rent payment date of the first of the month. The Landlord is claiming a loss of rental income for April 1 to April 15, 2016 because the unit was not rented during that time period. In most cases the Landlord would be awarded the lost rental income, but in this situation the Landlord had possession and use of the rental unit during the first 2 weeks of April, 2016 for renovations; therefore the unit could not have been rented during that time period.

Section 7.2 of the Act says (2) a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find the Landlord had possession and use of the unit for renovations during the time period of April 1 to April 14, 2016; therefore the Landlord did not do whatever is reasonable to minimize that damage or loss caused by the Tenant for the late notice to end the tenancy. Consequently, I dismiss the Landlord's claim for lost rental income of \$462.50 for April 1 to April 15, 2016 as the Landlord had possession and use of the rental unit and the rental unit was under renovations which did not allow the unit to be rented.

With regard to the Landlord's claims for the cost to repair the blinds the Landlord has withdrawn this claim.

With regards to carpet cleaning the Landlord and the Tenant both agree the \$80.00 charge in the tenancy agreement should be deducted from the security deposit. I order the Landlord to deduct \$80.00 from the Tenant's security deposit.

As the Landlord has only been partially successful in this matter I order the Landlord to bear the cost of \$100.00 filing fee for this proceeding which he has already paid.

Further I order the Landlord to return the balance of the Tenant's security deposit of \$925.00 less \$80.00 for carpet cleaning in the amount of \$845.00 forth with.

Conclusion

I order the Landlord to return the balance of the Tenant's security deposit in the amount of \$845.00 within 15 days of receiving this decision.

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: September 06, 2016

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Residential Tenancy Branch