



# Dispute Resolution Services

Page: 1

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            MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for loss of rent, a late fee, and damage to the rental unit; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I confirmed that the landlord served its hearing documents and evidence upon the tenant via registered mail. I also confirmed that the tenant had not served any rebuttal submissions or evidence upon the landlord and that the tenant intended to provide her position orally during the hearing.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The tenancy started on October 15, 2016 for a one year fixed term set to expire October 31, 2017 and continue on a month to month basis thereafter. The tenant paid a security deposit of \$500.00 and a pool key deposit of \$6.00. The tenant was required to pay rent of \$1,000.00 on the first day of every month.

On October 4, 2017 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause (the Notice) with an effective date of November 30, 2017. The tenant filed to dispute the Notice on October 10, 2017 and a hearing was scheduled for December 28, 2017. On October 28, 2017 the tenant telephoned the landlord and notified the landlord that she had moved out. A move-out inspection was performed by the landlord only. The landlord's agent could not recall

whether the tenant was invited to participate in the move-out inspection. The tenant testified that she was not asked to participate.

The landlord submitted that the tenant did not provide advance notice of her intention to vacate early and as a result the landlord suffered a vacancy for the month of November 2017. The rental unit was re-rented starting December 1, 2017 for the monthly rent of \$1,025.00. The landlord seeks to recover from the tenant \$1,000.00 for loss of rent for November 2017 plus a late fee of \$25.00 for the month of November 2017.

The tenant acknowledged that she did not give the landlord any advance notice of her intention to move out early. The tenant explained that the landlord had given her notice to move out and although she did not agree with the landlord's reasons she could not risk going to Arbitration and if she lost she and her family would have to move with very little time. So, the tenant was looking for new living accommodation and when she found something suitable she had to take it. The tenant was of the view the landlord ought to have given her three months to vacate.

In addition to the above, the landlord seeks to recover \$94.08 for damage to the blinds in the rental unit. The landlord explained that some of the plastic clips that hold the vanes of the vertical blinds were broken and the clips could not be fixed or replaced so a whole new track had to be installed.

The tenant acknowledged that some of vanes on the vertical blinds would fall down and when that happened she would put them back up. The tenant pointed out that she was not able to see the alleged damage because the landlord did not invite her to participate in the move-out inspection.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

### **Loss of Rent**

Section 44 provides for all the ways a tenancy ends. I find the tenancy came to an end when the tenant abandoned or vacated the rental unit on October 28, 2017, as provided under section 44(1)(d) of the Act. At issue is whether the tenant violated the Act by ending the tenancy without sufficient notice and is obligated to compensate the landlord.

The landlord had given the tenant a 1 Month Notice to End Tenancy under section 47 of the Act with an effective date of November 30, 2017. The effective date of November 30, 2017 meets the requirement to give the tenant at least one full month of notice under section 47(2) and the landlord could not have ended the tenancy any earlier than November 30, 2017. Accordingly, the landlord would not be in a position to secure a replacement tenant earlier than December 1, 2017 and since the tenant had filed to dispute the 1 Month Notice, the landlord would not been

able to seek a replacement tenant any earlier than say January 1, 2018. It was not until the tenant telephoned the landlord on October 28, 2017 was the landlord in a position to look for a replacement tenant and I am of the view that securing a replacement tenant for December 1, 2017 demonstrates the landlord acted with due diligence.

The Act provides that a tenant may end a month to month tenancy by giving the landlord one full month of notice, as provided under section 45 of the Act. The tenant did not give the landlord any advance notice and just moved out.

I find the tenant's decision to vacate the rental unit early upon securing new living accommodation for her family is understandable; however, it remains a breach of the notice requirements of the Act and I find the tenant must compensate the landlord for the vacancy the landlord suffered as a result for the month of November 2017. Therefore, I grant the landlord's request to recover loss of rent in the amount of \$1,000.00 from the tenant.

### **Late fee**

Section 7 of the Regulations permits a landlord to charge a tenant a late fee if the tenancy agreement contains such a provision. The tenancy agreement has a late fee clause that enables the landlord to charge a late fee if the tenant fails to pay rent by the due date; however, the tenancy came to an end in October 2017 and the landlord's losses with respect to November 2017 are for loss of revenue. Therefore, I find the landlord is not entitled to charge the tenant a late fee for November 2017 and I dismiss this portion of the landlord's claim.

### **Damage to blinds**

Under sections 32 and 37 of the Act, a tenant is responsible for repairing damage caused by the tenant or persons permitted on the property by the tenant. However, these sections also stipulate that reasonable wear and tear is not considered damage.

Based on the submissions of both parties, I am satisfied that some of the plastic clips that hold the vertical vanes were likely broken at the end of the tenancy. However, considering the clips are only plastic and are in a window, subject to heat and light, I find I am of the view that these clips are susceptible to breaking due to age and wear and tear. That, and the absence of a move-out inspection with the tenant, leads me to deny the landlord's claim for compensation for broken plastic clips on the vertical blinds.

### **Filing fee, security deposit and Monetary Order**

The landlord was successful in the most material aspect of this claim and I award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit and key deposit in partial satisfaction of the award for loss of rent.

In keeping with all of my findings and awards as described above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Loss of rent – November 2017	\$1,000.00
Filing fee	100.00
Less: security deposit and key deposit	<u>- 506.00</u>
Monetary Order	\$ 594.00

### Conclusion

The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$594.00 to serve and enforce upon the tenant.

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: July 03, 2018

---

Residential Tenancy Branch