



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy started on October 1, 2016. Rent of \$2,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit. On January 10, 2018 the Tenant gave notice to end the tenancy for February 1, 2018 and moved out on January 31, 2018. The Parties mutually conducted both a move-in and move-out inspection with completed inspection reports copied to the Tenant. The Tenant provided its forwarding address on February 1, 2018.

The Landlord states that the unit was advertised on an online site starting January 12, 2018 with rent of \$2,000.00. The Landlord states that there were few prospective tenants and that the unit was finally filled on April 15, 2018. The Landlord did not provide any supporting documentary or witness evidence of its efforts to rent the unit. The Landlord argues that because the Tenant did not give the required time for the notice to end the tenancy the Tenant owes the Landlord for lost rental income for February 2018 and the Landlord claims only the security deposit amount of \$1,000.00. The Landlord states that the Tenant was being difficult about showing the unit. The Landlord also states that she does not know if there were any showings in January 2018. The Landlord states that after move-out there were some repairs required to the unit.

The Tenant states that he does not know whether the Landlord advertised the unit or not. The Tenant states that his friend is the real estate agent for the owner of the unit and this agent informed the Tenant that after the end of the tenancy the owner kept changing his mind between selling and renting the unit.

### Analysis

Section 45(1) of the Act provides that a tenant may end a periodic 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,
- and
- (b) 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.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this

Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Based on the undisputed evidence that on January 10, 2018 the Tenant gave its notice to end the tenancy for February 1, 2018 I find that the Tenant breached the Act by failing to give the required amount of notice. In terms of the Landlord's requirement to mitigate claimed losses however the Landlord gives inconsistent evidence in relation to showing the unit to prospective tenants in January 2018 and no evidence that the repairs required to the unit were caused by the Tenant. I note that there is no claim against the Tenant for having left damages to the unit. The Landlord provided no supporting evidence of when or for what periods of time the unit was advertised.

The Tenant's evidence of the owner having a real estate agent tends to support that the unit was up for sale at some point. This would expectedly work against the Landlord's efforts to rent the unit while the unit was for sale. The Tenant's evidence of the owner's indecision about selling the unit tends to explain the long period of time that passed before the unit was finally rented and I consider that this evidence also holds a ring of truth. As a result I find on a balance of probabilities that the Landlord has not provided sufficient evidence that the loss of rental income was caused by the Tenant's breach or that the Landlord took reasonable steps to mitigate the losses claimed. As a result I find that the Landlord has not substantiated an entitlement to retain the Tenant's security deposit and I dismiss the claim.

As the Landlord's claim has not been successful I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to return the security deposit plus zero interest of \$1,000.00 to the Tenant forthwith.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,000.00**. If necessary, this order may be 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: September 14, 2018

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Residential Tenancy Branch