



# Dispute Resolution Services

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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:** *MNSD, MND, MNDC, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for liquidated damages, return of rental incentive and the filing fee. The tenant applied for a monetary order for the return of double the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of double the security deposit?

### **Background and Evidence**

The tenancy started on September 01, 2013 for a fixed term of one year with an effective end date of August 31, 2014. The monthly rent was \$850.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$425.00.

The landlord filed a copy of the tenancy agreement. A clause in the agreement states that the tenant would pay liquidated damages of \$350.00 which is the cost of re-renting the unit in the event that the tenant ended the fixed term tenancy prior to the end date. The tenant signed in agreement and also agreed to return the rental incentive of \$70.00 per month that he received for entering into a fixed term tenancy of one year, if he ended the tenancy prior to the end date of the fixed term..

On September 29, 2013, the tenant gave the landlord written notice to end the tenancy effective October 31, 2013. The tenant also provided his forwarding address on that day.

The landlord made this application on November 25, 2013 to retain the security deposit in satisfaction of his claim for liquidated damages, rental incentive and cleaning costs. The tenant agreed to pay for the cost of cleaning and liquidated damages but argued that he should not have to pay both liquidated damages and return the rental incentive.

### **Analysis**

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

The parties entered into a fixed term tenancy agreement on August 27, 2013 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 the tenant gave the landlord one month's notice to end the tenancy effective October 31, 2013. Since the tenant was in a fixed term tenancy, he was ending the tenancy prior to the end date of August 31, 2014. The tenant signed the tenancy agreement and agreed that he would pay liquidated damages (\$350.00) and return the rental incentive (\$140.00), in the event he ended the fixed term tenancy prior to the end date. Therefore I find that the tenant is responsible for these items.

During the hearing the tenant agreed to pay the cleaning costs of \$35.00. Since the landlord has proven his claim he is entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim of **575.00**.

#### **Tenant's application:**

Section 38(1) of the Act provides that the landlord must return the security and pet deposits or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenant provided the landlord with his forwarding address on September 29, 2013. The landlord failed to return the security deposit or file an application to keep it within 15 days of receiving the tenant's forwarding address in writing and therefore must return double the security deposit. The landlord has in his possession \$425.00 for a security deposit. Since the tenant has proven his case, he is entitled to the recovery of the filing fee of \$50.00. Overall, the tenant has established a claim of **\$900.00**.

Overall the landlord has established a claim of \$575.00 and the tenant has established a claim of \$900.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$325.00 which consists of difference between the established entitlements of the parties.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$325.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$325.00**.

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: March 18, 2014

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Residential Tenancy Branch

