



# 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, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package on January 14, 2014 by registered mail. She said that she sent this package to the forwarding address provided by the tenant as part of the joint move-out condition inspection report. The landlord entered into written evidence a copy of the Canada Post Customer Receipt including the Tracking Number to confirm this registered mailing. She said that the registered mail package has not been returned to the landlord by Canada Post. Based on the evidence supplied by the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package including notice of this hearing on January 20, 2014, the fifth business day after its registered mailing.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenant moved into this rental unit on June 5, 2013, on the basis of a fixed term Residential Tenancy Agreement (the Agreement) that was to end on December 31, 2013. However, according to the terms of the Agreement, entered into written evidence by the landlord, the tenancy was to continue on a month-to-month basis after December 31, 2013, unless the tenant gave notice to the landlord that he intended to vacate the rental unit by December 31, 2013. Monthly rent was set at \$725.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$50.00 security deposit paid on or about June 5, 2013.

On December 8, 2013, the landlord received the tenant's written notice to end this tenancy by December 31, 2013 in her office mailbox. The parties participated in a joint move-in condition inspection on June 5, 2013, and a joint move-out condition inspection on December 31, 2013, at which time the tenant surrendered vacant possession of the rental unit to the landlord. The landlord entered into written evidence copies of the reports of the move-in and move-out condition inspections.

The landlord's application for a monetary award of \$725.00 sought compensation for losses arising out of the tenant's failure to provide one full month's notice that he was vacating the rental unit.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. Section 52 of the *Act* requires that a tenant provide this notice in writing.

In this case, when the tenant did not provide written notice of his intention to end his tenancy by December 31, 2013, the end date for his fixed term tenancy, the provisions of section 45(1) of the *Act* took effect with respect to his responsibility to notify the landlord regarding his intention to end his tenancy. In order to avoid any responsibility for rent for January 2014, the tenant would have needed to provide his written notice to end this tenancy before December 1, 2013. As this did not happen until December 8, 2013, I find that the tenant did not comply with the provisions of section 45(1) of the *Act*.

There is undisputed evidence that the tenant did not pay any rent for January 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming

compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord testified that she placed advertisements as to the availability of the rental unit for January 2014 immediately after she received the tenant's written notice to end this tenancy. She identified four popular rental websites where advertisements were placed and noted that the landlord also advertised this rental unit in local newspapers. She testified that she had two or three showings of the rental unit during December 2013, when the tenant was still residing there. She testified that on January 19, 2014, she was successful in signing a new tenancy agreement with a new tenant who took occupancy on February 1, 2014, paying the same \$725.00 in monthly rent as was being paid by the tenant in accordance with his Agreement.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for January 2014. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the losses arising out of the tenant's actions. For these reasons, I find that the landlord is entitled to a monetary award of \$725.00 for the loss of rent for the month of January 2014.

I allow the landlord to retain the tenant's \$50.00 security deposit to partially satisfy the monetary award issued in this decision. No interest is payable on this deposit over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

### Conclusion

I issue a monetary award in the landlord's favour under the following terms, which allows the landlord to recover losses and the filing fee for this application and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Loss of Rent January 2014	\$725.00
Less Security Deposit	-50.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$725.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 24, 2014

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Residential Tenancy Branch

