



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

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

1. A Monetary Order for unpaid rent - 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 under oath 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 or undisputed facts: The tenancy started on November 1, 2014 on a fixed term to end April 30, 2015. Rent of \$1,395.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$697.50 as a security deposit. The Tenant moved out of the unit on December 18, 2014. The Landlord received the Tenant’s forwarding address on December 18, 2014. The Landlord did not return the security deposit and made the application to claim against the security deposit on February 12, 2015. A new tenant was found for the unit for February 1, 2015.

The Landlord states that on November 19, 2014 the Tenant gave oral notice to end the tenancy for December 1, 2014. The Landlord states that the Tenant was informed that the Landlord required the notice in writing. The Landlord states that the unit was immediately advertised online for rent at the same rate for December 1, 2014. The Landlord states that she had prospective renters lined up to see the unit over the following week-end but that the Tenant had not yet provided the written notice. The Landlord states that the Tenant was told that the Landlord needed the written notice and when the week-end came the Tenant still had not provided the notice so the Landlord cancelled the prospective renters. The Landlord states that on November 25, 2014 the Tenant gave the Landlord an email notice indicating that the tenancy would end on December 31, 2014. The Landlord states that the advertisement was then changed to reflect a January 1, 2015 occupancy. The Landlord states that no renters were found until February 1, 2015. The Landlord states that in her experience as a landlord she has found that almost all renters do not want to move on January 1 due to the holiday season in December and will delay a move for that reason. The Landlord claims \$1,395.00 as unpaid rent.

The Tenant states that the end of tenancy date was changed to the end of December 2014 as he felt that the Landlord required more time. The Tenant states however that the Landlord never informed the Tenant of the prospective renters for December 1 and had the Tenant been informed he would have ended the tenancy for that date as well. The Tenant states that the Landlord could have accommodated the Tenant and that the Landlord failed to mitigate the losses claimed by not informing the Tenant of the prospective tenants. The Tenant questions why the Landlord would be entitled to retain the security deposit and the rent in such an unfair situation. The Tenant states that the tenancy ended on December 31, 2015 and argues that the Landlord should have made its application to claim against the security deposit sooner than February 2015.

The Landlord states that she knew that she had to make her application within 15 days of the end of the tenancy and did make her application within the time required. The Landlord argues that for a fixed term tenancy the tenancy ends when the term ends,

unless the tenant wishes to stay and then it becomes a month to month tenancy, or the tenancy ends when a new tenant is found to take over the fixed term tenancy. The Landlord argues that the Landlord had 15 days from the date the new tenants took over the tenancy starting February 1, 2015. The Landlord states that she based her argument on information obtained from the Residential Tenancy Branch before she made the application.

### Analysis

Section 44 of the Act provides that a tenancy ends when, inter alia, a tenant vacates or abandons the rental unit. While a tenant may be liable for rent payments under a fixed term tenancy to the end of the term or until a new tenant takes over, this liability does not determine the end of the tenancy. Given the undisputed evidence that the Landlord had possession of the unit on December 18, 2015, I find that the tenancy ended on this day.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the tenancy ended on the same day as the Landlord received the forwarding address and given that the Landlord made its application on February 12, 2015, I find that the Landlord made its application later than the 15 days and that the Landlord is required to repay the Tenant double the security deposit plus zero interest in the amount of **\$1,395.00** (\$697.50 x 2).

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that

reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. By giving notice to end the tenancy prior to the end of the fixed term date, I find that the Tenant failed to comply with the Act and the tenancy agreement. Although the Landlord did not inform the Tenant of the prospective renters, I find that the Landlord acted reasonably and prudently to cancel the showings for the prospective renters in the face of no written notice and had no strict obligation to inform the Tenant as no written notice had been received from the Tenant. I accept that the Landlord took reasonable steps to mitigate its losses by advertising the unit as done and based on the undisputed evidence that a new tenant was found for February 1, 2015, I find that the Landlord has substantiated an entitlement to **\$1,395.00**. Given the Landlord's mixed success with the application I decline recovery of the filing fee. Deducting the **\$1,395.00** owed to the Tenant leaves **nothing** owed to the Landlord.

#### Conclusion

The Landlord's claim has been fully satisfied.

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: August 28, 2015

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Residential Tenancy Branch

