



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

Landlord: MNR, MNSD, FF  
Tenant: MNSD, FF

### Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

**The tenant** filed their application on May 16, 2016, for the return of their security and pet damage deposits, and to recover their filing fee.

**The landlord** filed their application May 26, 2016 for an Order to recover unpaid rent and retain the tenant's security deposit in satisfaction of their claim, and to recover their filing fee.

Both parties attended the hearing and were given opportunity to present *relevant* evidence and make *relevant* submissions. The parties acknowledged receiving the evidence of the other inclusive of document, and image evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence they wished to present. The parties were apprised that despite the abundance of evidence submitted I would only consider evidence *relevant* to their respective claims and that the Decision would only reflect evidence necessary to determine their claims.

### *Preliminary matters*

The landlord submitted late evidence dated November 01, 2016 purporting to amend their application's monetary claim. The landlord was apprised that their amendment was not within the timelines prescribed to amend their application and that their amendment attempt was not presented in the proper form, as an amendment, but as evidence. As a result of all the above the landlord's purported amendment will not be considered, however the associated evidence is accepted *as relevant*. The landlord

was apprised it remains available to them to file a new application addressing other claims than their original claim.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The *relevant* evidence is as follows.

**The parties** agreed this tenancy began September 01, 2015 and has since ended. The tenancy was guided by a written tenancy agreement of which I have benefit of a copy. The agreed payable monthly rent under the written agreement was \$1150.00 payable on the 1<sup>st</sup> of each month, and the payable amount included water and electricity. The parties agreed within the tenancy agreement the tenant would pay \$100.00 each month for utilities from October to March. At the outset of the tenancy the landlord collected a security deposit in the amount of \$575.00, and two(2) pet damage deposits in the sum of \$1150.00, all of which the landlord holds in trust in the amount of \$1725.00. The parties agreed that at the start of the tenancy they mutually conducted a *move-in* condition inspection as required by the Act. The landlord testified they did not arrange for a *move out* inspection at the end of the tenancy and such inspection did not occur.

**The parties** agreed the tenancy ended May 15, 2016 when the tenant vacated and subsequent to the tenant providing the landlord with an e-mail on May 04, 2016, dated May 07, 2016, notifying the landlord they were vacating May 15, 2016. The landlord acknowledged receiving a copy of the tenant's notice to end the tenancy in their mailbox on May 09, 2016. The tenant vacated in accordance with their notice(s). At the end of the tenancy the parties did not agree as to the administration of the security deposit and the landlord subsequently filed to retain it in partial satisfaction of their claim.

#### *Landlord's application*

**The landlord** seeks unpaid rent for June 2016 in the amount of \$1150.00. The landlord argued the tenant provided 'short notice' to vacate contrary to **Section 45** of the Act: Tenant's Notice.

Following a disputatious period between the parties in latter April and early May 2016 the landlord received the tenant's notice to end May 09, 2016. The landlord acknowledged the start of the notice clearly stated the tenants were vacating May 15, 2016. The landlord testified they were taken aback by the tenant's notice and the multiple reasons itemized for ending the tenancy. The landlord acknowledged they neither attended to a *move-out* inspection nor sought new tenants for the following month of June 2016. The landlord claims they suffered a loss of rent revenue for June 2016 as a result of the tenant's non-compliant notice to vacate.

### *Tenant's application*

**The tenant** sought the return of their 3 deposits amounting to \$1725.00 pursuant to **Section 38** of the Act.

Both parties agreed the landlord received the tenant's forwarding address in writing (letter) dated May 16, 2016, on May 19, 2016. The parties acknowledged they did not mutually agree as to the disposition of the deposits at the end of the tenancy. The tenant prematurely filed their application for dispute resolution seeking return of their deposits the same day they sent the landlord their forwarding address. The landlord subsequently filed their respective application one week later.

In respect to the landlord's claim the tenant claims they provided their notice to vacate, effectively pursuant to **Section 45(3)** of the Act as guided by garnered information.

The tenant's notice itemized their reasons for their late or short notice. In part, one reason stated the landlord turned off the heat without notice on April 15, 2016. The landlord referred to this as a planned shut down for the season as an economy move as the parties agreed was done the previous year at the same time. In other part, another reason stated "harassment" by the landlord in early May 2016 regarding alleged illegal activity with the spectre of eviction. In further part, another reason is the landlord not authorizing the tenant obtaining their own internet service installation and the landlord opposed any physical installation and stating they would dismantle same if necessary. In additional part, the tenant's reason was the landlord ignoring requests to resolve problems in person. In final part, the last reason stated that as a result of the above the tenant felt discomfort and unsafe. The landlord argued they did not harass but rather informed the tenants of their opposition to installing apparatus toward an additional internet service when the tenants could adjust their usage to avoid the landlord repeatedly receiving copyright infringement notices by their service provider. Within days after the parties issues evolved the tenant sent the landlord their notice to vacate.

**In summary** the tenant argued they exited the tenancy with short notice pursuant to Section 43(3). The landlord argued the tenant did not have cause to end the tenancy with short notice and their non-compliance with the requirement to provide a month's notice caused a shortfall in rent revenue for June 2016.

## **Analysis**

The parties may access referenced publications at: **[www.bc.ca/landlordtenant](http://www.bc.ca/landlordtenant)**.

I have reviewed all *relevant* evidence of the parties. On the preponderance of the relevant document evidence and the testimony of the parties, I find as follows.

### *Landlord's claim*

In respect to the **landlord's application** I find the landlord did not comply with their obligations pursuant to **Section 36** of the Act to conduct and record a mutual condition inspection at the end of the tenancy and therefore lost their right to claim against the security deposit *for damage* to the rental unit. However, the landlord retains the right to claim against the security deposit for *monies owing for other than damage to the unit*: in this case, unpaid rent. The landlord successfully filed their application against the tenant's deposits within 15 days of receiving the tenant's forwarding address as required by **Section 38** of the Act.

**Section 45**, in relevant part to this matter, states as follows,

### **Tenant's Notice**

- 45** (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The landlord may have failed to comply with a material term of the tenancy agreement; however, I find that even if that were the case, the tenant did not allow any time within

reason for the landlord to correct the situation after any written notification of the failure. This section of the Act does not operate to allow a tenant to effectively force an end to the tenancy in the event of disagreement. The dispute resolution process is available to

parties if they disagree. I find that the tenant's notice to vacate does not meet the test established by Section 45(3) of the Act allowing the tenant to end the tenancy other than in accordance with subsections (1) and (2) of 45. As a result, I find the tenant did not provide appropriate notice to end in accordance with the Act.

I find that while the Act requires tenants to give one full month's notice they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice: in this case, June 2016. However, **Section 7** of the Act provides as follows:

**Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlord made no effort to minimize their losses pursuant to 7(2) by advertising or by other activities toward re-renting the unit for June 2016 after receiving the tenant's Notice to vacate on May 09, 2016. Regardless, I accept that even if the landlord had made efforts toward mitigation of losses starting on the day they received the tenant's notice, on balance of probabilities they would be late in their efforts designed to attract a new tenant for the following month. None the less, on balance of probabilities the landlord may have attracted a new tenant for June 15, 2016. As a result, I grant the landlord one half month's rent in compensation for loss of rent revenue in the amount of **\$575.00**.

The deposits held in trust by the landlord will be offset to accommodate the landlord's compensation.

*Tenant's claim*

In respect to the **tenant's application** for return of their deposits I find the landlord made application to retain the security deposit in accordance with the timelines in the Act therefore the tenant is not entitled to the *doubling* provisions in **Section 38** of the Act. Having dealt with the landlord's claim the tenant is entitled to any remainder of their deposits.

Given that both parties were in part successful in their applications they are equally entitled to recover their filing fee, which for calculation purposes mathematically cancel.

**I Order** the landlord may retain \$575.00 of the tenant's deposits in full satisfaction of their claim and must return the balance of the deposits to the tenant in the amount of \$1150.00, forthwith.

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$1150.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

### **Conclusion**

The applications of both parties, in relevant part, have been granted.

**This Decision is final and binding on both parties.**

*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: November 16, 2016

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Residential Tenancy Branch