



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** MNR OPB FF

### **Introduction**

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew his request for an Order of Possession, as the Tenant vacated the rental unit on November 15, 2008.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

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

The issues to be decided are whether the Landlord is entitled to a Monetary Order for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act* (Act).

### **Background and Evidence**

The Landlord and the Tenant agree that this tenancy began on May 1, 2007, that the Tenant vacated the rental unit on November 15, 2008, that the Tenant was required to pay monthly rent of \$1,100.00, and that she paid a security deposit of \$550.00 on May 01, 2007 and a pet damage deposit of \$550.00 on June 1, 2007.

The Landlord and the Tenant agree that, on October 29, 2008, the Tenant verbally advised the Landlord's wife that she would be vacating the rental unit prior to the end of November of 2008. The Landlord and the Tenant agree that, on November 1, 2008, the Tenant gave the Landlord written notice of her intent to vacate the rental unit. The letter, which was submitted in evidence, does not specify the date that she intended to vacate the rental unit. The parties agree that the Tenant left a phone message for the Landlord on November 1, 2008, at which time she advised that she would be vacating the rental unit on, or before, November 15, 2008.

In the letter she gave the Landlord on November 1, 2008, she authorized him to retain her security deposit, of \$1,100.00, in lieu of rent for November. The Tenant did not pay the Landlord any other money for rent for November.

The Landlord is seeking compensation, in the amount of \$1,100.00, for rent for November of 2008, and \$600.00 in compensation for loss of revenue for December of 2008. The Landlord argued that he is entitled to compensation for loss of revenue from December because the Tenant did not provide one full month's notice of her intent to vacate. At the hearing the Landlord stated that he has advertised the rental unit, that he is screening perspective renters, but that he has not rented the rental unit for December because he is making minor repairs/renovations and he has not had time to complete those repairs/renovations due to personal commitments.

The Landlord indicated in his Application to Review that he intends to return the Tenant's security and pet deposits "when move out inspection is complete". There is no evidence that the Landlord filed an application claiming to keep the deposits.

### **Analysis**

I find that the Tenant failed to comply with section 45 of the *Act* when she did not give the Landlord one full month's written notice of her intent to vacate the rental unit. To be in compliance with the *Act*, the Tenant would have needed to give the Landlord written

notice of her intent to vacate the rental unit at the end of November on, or before, October 31, 2008. I note that the Tenant was only one day late in giving her written notice, and that she had provided verbal notice within the requisite time period.

Section 7(1) of the *Act* stipulates that when a landlord or a tenant does not comply with the *Act*, the non-compliant party must compensate the other for damage or loss that results. Section 7(2) of the *Act* stipulates that a landlord who claims compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss. In the circumstances before me, I find that the Landlord did not take reasonable steps to minimize his losses and that he is not, therefore, entitled to compensation for loss of revenue for December. In reaching this conclusion I considered the following:

- The Tenant was only one day late in providing her written notice to the Landlord, which afforded him a significant amount of time to find new tenants
- The Tenant did provide verbal notice to the Landlord in advance of the written notice
- The rental unit was actually vacated on November 15, 2008, rather than the end of the month, which afforded the Landlord the opportunity to repair/renovate the rental unit prior to the end of the month, and to show the unit without restrictions
- The Landlord stated that he was not prepared to rent the rental unit on December 1, 2008 due to his desire to repair/renovate the rental unit.

I also find that the Landlord is not entitled to compensation for rent for November of 2008. In reaching this conclusion, I considered the following:

- The Tenant authorized the Landlord to retain her security deposit as compensation, in full, for rent for November
- Although the Tenant is prohibited from applying her security/pet deposits to her rent, pursuant to section 21 of the *Act*, the Landlord currently has money belonging to the Tenant that is the equivalent of the outstanding rent being claimed by the Landlord

- The Landlord was obligated, pursuant to section 38 of the *Act*, to either return the security/pet deposits prior to November 30, 2008 or to file an Application for Dispute Resolution claiming to keep it. The Landlord has not met his obligation pursuant to section 38 of the *Act* so he has now forfeited his right to make a claim against it
- As both parties contravened the *Act* in regards to the security/pet deposits, I find that most reasonable resolution is to authorize the Landlord to retain the security/pet deposits in lieu of rent for November, as agreed to by the Tenant.

The Landlord retains the right to seek a Monetary Order for any damages caused the rental unit by the Tenant.

### **Conclusion**

I find that the Landlord has not established a monetary claim, and I dismiss his application for a Monetary Order. I find that the Landlord's application has been without merit and I dismiss his application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Dated: December 3, 2008