

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

MNSD, MNR, FF

### **Introduction**

This hearing was convened in response to applications filed by both the landlord and the tenant. The landlord seeks:

1. A monetary order for unpaid Rent and utilities in the amount of \$823.96
2. An order to be allowed to retain the security and pet damage deposit in partial satisfaction of monetary claim.
3. A monetary order to recover the filing fee for this application

The tenant seeks

1. a monetary order to recover the security deposit and pet damage deposit
2. A monetary order to recover the filing fee for this application

### **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 tenancy started January 2008. Rent was payable at \$700 per month due on the 1<sup>st</sup> of each month. The landlord collected a security deposit and a pet damage deposit , Of \$350 each ( \$700) at the outset of the tenancy. The landlord received a notice from the tenant to end the tenancy by December 1, 2008, on November 21, 2008. The tenant vacated the suite by December 1, 2008. There was no start of tenancy or end of tenancy inspection done, but the parties agree that there were no issues in respect to the unit's condition. On vacating the rental unit the tenant assigned the security deposit

in the amount of \$350, to the landlord, in writing, in compensation for the lack of proper notice to end the tenancy. Following receipt of the tenant's notice to end the tenancy the landlord did not attempt to rent the unit for December 1, or December 15, 2008. The landlord's testimony is that he only recently rented it again.

The tenant does not think she owes any additional payment to the landlord. In particular, she does not think she owes any rent for December 2009. The tenant acknowledges she consented to the landlord retaining the security deposit of \$350, but claims she is entitled to the return of the pet damage deposit in the amount of \$350.

### **Analysis**

As to the landlord's claim on application, Section 7 of the Residential Tenancy Act (the Act) states that in claims for monetary compensation, tenants and landlords have a duty to do what is reasonable to mitigate loss.

#### **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.

(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.

I find the landlord did not make a reasonable attempt to minimize revenue loss for the month of December, up to the adjusted effective date of December 31, 2008, and determined to not again rent the unit, "until recently". Therefore, I find the landlord is entitled to loss of revenue for the first half of December, 2008 in the amount of one half (1/2) month's rent, or **\$350**, and 1/2 month of utilities in the amount of **61.98**. As the landlord has been partially successful in their application, I grant the landlord recovery of the filing fee in the amount of **\$25**.

**Section 38** of the Act reads as follows;

**38** (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

It is undisputed by the tenant and landlord that the tenant gave written consent for the landlord to retain the security deposit in lieu of inadequate and improper notice.

Therefore, the landlord already has rightfully received an amount equal to the proceeds of the security deposit and interest in the amount of \$354.66.

The landlord's total entitlement claim from the tenant is as follows:

December - ½ month rent	\$350.00
December utilities - ½ month	61.98
Filing fee	25.00
deposit retained + int. – tenant's consent	-354.66
<b>Landlord's entitlement claim from tenant</b>	<b>\$82.32</b>

The tenant's application claim is reduced by the amount of \$354.66 (the amount of the security deposit plus interest wilfully assigned to the landlord at end of tenancy).

I find the tenant is entitled to the return of the pet damage deposit and interest in the amount of **\$354.66**. As the tenant has been successful in their application, I grant the tenant recovery of the filing fee in the amount of **\$50** for a total entitlement claim of **\$404.66**.

### **Conclusion**

I grant the tenant a monetary order calculated as follows:

Tenant's entitlement claim from landlord	404.66
Landlord's entitlement claim from tenant	-82.32
<b>Sum to be returned to the tenant</b>	<b>322.34</b>

I grant the tenant an order under section 67 for **\$322.34**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 10, 2009