



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was scheduled to hear the landlords' application for compensation for damage to the rental unit, unpaid rent, retention of the security deposit and recovery of the filing fee. In making the application, the landlords specified that they were seeking unpaid rent for March 2009 and retention of the security deposit. The tenant did not appear at the hearing. The landlord testified that he notified the tenant of this hearing by Registered Mail; however, the Registered Mail was returned to him as unclaimed. Upon enquiry, the landlord testified that he learned of the tenant's forwarding address during a dispute resolution hearing on March 11, 2009. In April 2009 the landlord observed the tenant coming and going from the forwarding address. Although the Registered Mail was not claimed by the tenant, I am satisfied that the landlords served the tenant in accordance with the requirements of the Act and I proceeded to hear from the landlords.

As a preliminary issue, the landlords' request for an amendment was addressed. The landlord testified that on June 17, 2009 the landlord sent the tenant the landlord's amended claim to include damages and loss of rent for April 2009. The landlord testified that the Registered Mail is still at the postal outlet waiting for the tenant to pick it up. I denied the landlord's request to amend the application filed on March 24, 2009 as I was not satisfied the landlords followed the Rules of Procedure with respect to allowing the tenant sufficient time to receive and review the additional evidence served upon her. As the landlords were informed at the hearing, the landlords' additional claims included in the amendment are dismissed with leave to reapply and this hearing only pertains to the unpaid rent for March 2009.

### Issues(s) to be Decided

1. Have the landlords established an entitlement to unpaid rent for March 2009?
2. Retention of the security deposit.
3. Award of the filing fee.

### Background and Evidence

The landlords testified that the six-month tenancy commenced November 1, 2008 and the tenant was required to pay rent of \$1,690.00 on the 1<sup>st</sup> day of every month. A

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\$845.00 security deposit was collected on November 10, 2008. On February 16, 2009 the landlords received a one-month notice to end tenancy from the tenant which was dated February 15, 2009. The landlords deposited the March 1, 2009 rent cheque; however, the tenant had placed a stop payment on the cheque and it was returned to the landlords.

It is noted in the March 11, 2009 dispute resolution decision that the tenant had testified that she had already vacated the rental unit. The date the tenant actually vacated was not provided.

## Analysis

Parties to a dispute resolution proceeding must adhere to the Rules of Procedure. With respect to amending an application for dispute resolution, Rule 2.5 of the Rules of Procedure provides, in part,

*If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.*

In this case, the landlords had served the original application upon the tenant and then served an amendment to the original application. Since the amended application was sent to the tenant on June 17, 2009 it is deemed served upon the tenant on June 22, 2009 pursuant to section 90 of the Act. The tenant was deemed served with the amended application less than five days before the date of this hearing. The landlord's explanation that one of the landlords was out of the country until June 4, 2009 was not sufficiently compelling to allow the landlords to amend the application without sufficient notification to the tenant. Accordingly, the amendment was denied and the landlords are at liberty to make a subsequent application for dispute resolution in order to adequately notify the tenant of the landlords' additional claims. The remainder of this decision pertains to the original application for unpaid rent for March 2009 and retention of the security deposit.

Section 44 of the Act provides for the ways a tenancy ends. A tenancy ends when a tenant vacates or abandons a rental unit. Although the tenancy ends on the date the tenant vacates, the landlord may be entitled to compensation for loss of rent where the tenant violates the Act, regulations or tenancy agreement. In this case, I am uncertain

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as to when the tenancy ended; however, based on the evidence before me, I find the landlords entitled to compensation for unpaid or loss of rent for March 2009.

If the tenant occupied the rental unit anytime after February 2009, the landlords would be entitled to unpaid rent for March 2009. If the tenant had vacated the rental unit in February 2009, the landlords would be entitled to loss of rent for March 2009 as the notice provided by the tenant was insufficient for the landlords to secure replacement tenants for March 2009.

As the landlords have established an entitlement to compensation for rent for March 2009, I authorize the landlords to retain the tenant's security deposit and accrued interest in satisfaction of the rent owed. I calculate the interest on the security deposit to be \$1.80.

The landlords are awarded the filing fee paid for making this application. In light of these findings, the landlords are provided with a Monetary Order calculated as follows:

Rent for March 2009	\$ 1,690.00
Filing fee	50.00
Less: security deposit and interest	<u>(846.90)</u>
Monetary Order	<u>\$ 893.10</u>

The landlords must serve the Monetary Order upon the tenant and may enforce it by filing it in Provincial Court (Small Claims).

## Conclusion

The landlord is authorized to retain the tenant's security deposit and interest in partial satisfaction of the rent owed to the landlords for March 2009. The landlords are also provided a Monetary Order for the balance owing of \$893.10 to serve upon the tenant.

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: June 24, 2009.

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Dispute Resolution Officer