



# Dispute Resolution Services

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

## **DECISION AND REASONS**

Dispute codes: MNR, MNSD, FF

### Introduction

This was an application by the landlord for a monetary order and an order to retain the security deposit. The tenant applied for the return of her deposit, including double the amount of the deposit. The hearing was conducted by conference call. The landlord and the tenant participated and I heard evidence from the named witnesses.

### Background and evidence

The rental unit is a basement suite. The tenancy began in August 1, 2008 and ran from month to month with rent in the amount of \$825.00 due in advance on the first day of each month. The tenant paid a security deposit of \$400 on July 21, 2008.

The tenant agreed to move out of the rental unit at the landlord's request at the end of November, 2008. The mover that the tenant hired did not attend and she had to get other help at the last minute. The landlord made arrangements to rent to a new tenant who arrived at the rental unit while the tenant was in the process of moving out. The new tenant did not move in and left, taking her belongings. The landlord and the tenant each have their own explanation as to why the new tenant chose not to move in. The prospective tenant gave evidence on behalf of the landlord as her reasons for not moving in. For the purposes of this decision it is not necessary for me to determine why the prospective tenant did not move in. When it was clear that a new tenant would not immediately occupy the rental unit the tenant made arrangements to return the following day, December 1, 2008, to clean the rental unit. After cleaning on December 1, 2008 the tenant requested the return of her security deposit. The landlord refused to return it

at that time. Later, on December 29, 2008 the landlord sent an e-mail to the tenant wherein she said:

I'll be registering a Dispute Resolution with the Tenancy Board for the following reason:

You failed to clean and vacate by 1:00 pm on November 30<sup>th</sup>. My next tenant was unable to move in and subsequently decided not to move in at all. I did not receive her rent for December and could have lost \$825.00

She went on to say that she would refrain from filing a dispute if the returned certain items, paid a portion of utilities and paid the sum of \$200.00 for a piece of pottery that she claimed the tenant or a friend removed..

The tenant did not accept the landlord's offer; she filed her application for dispute resolution on February 4, 2009. She claimed the sum of \$800.00 plus her filing fee. She testified that when she attended at the rental unit on December 31, 2008 to pick up some items, new tenants were moving into the rental unit.

The landlord submitted her application for dispute resolution on February 23, 2009. She claimed the sum of \$914.25 consisting of \$825.00 for December's rent, \$39.25 for unpaid utilities and the \$50.00 filing fee.

### Analysis and conclusion

It was evident from the testimony at the hearing and the submissions of the parties that the landlord re-rented the rental unit for some portion of December, 2008 and received rent for some or all of the month. She did not disclose that fact in her application and claimed the full amount of rent for the month of December. In the e-mail quoted above the landlord said she could have lost \$825.00. I infer from that statement that she was paid rent for December. The landlord did not provide evidence to establish what she received for rent for the month of December. In the absence of proof to establish the quantum of lost rent, if any, for the month of December, I dismiss the landlord's claim for unpaid rent without leave to reapply. The tenant accepted responsibility for unpaid

utilities and I award the landlord the sum of \$39.200 on that account. Because the landlord was substantially unsuccessful in her claim I decline to award the filing fee. The landlord sent in a late submission dated April 18, 2009 and received on April 20, 2009. The late submission was unsolicited and inappropriate; I have not considered it in arriving at my decision.

With respect to the tenant's claim, section 38 of the legislation provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Arbitration. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

The landlord acknowledged that she had the tenant's forwarding address. The tenant served the landlord with documents notifying the landlord of this application as required by the legislation. The security deposit was not refunded within 15 days as required by the legislation and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$802.69. This includes interest on the original deposit amount. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$852.69. Pursuant to section 72 of the Residential Tenancy Act, I deduct from that amount the sum of \$39.25 awarded to the landlord and I grant the tenant a monetary order in the amount of \$813.44. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated April 27, 2009.