



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for unpaid rent and to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset, the tenant confirmed his documentary evidence by stating that he agreed that the landlord could keep the surety deposit; therefore this portion of the landlord's claim is resolved.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of an apartment in a multi unit complex. The following evidence was not in dispute: the tenant moved into unit #203 from mid August 2010 to the end of the month; on September 1<sup>st</sup>, 2010, the tenant moved into unit #302 and signed a

month to month tenancy agreement; the rent was \$780.00 and the tenant paid a security deposit of \$390.00; on November 17<sup>th</sup>, 2010, the tenant gave written notice that he was moving out at the end of that month; and the tenant agreed that the landlord could keep the security deposit in compensation for the short notice.

The landlord made a monetary claim as follows:

- Loss of rent for December 2010:       \$ 780.00
- Loss of rent for January 2011:       \$ 780.00
- Breach of clause 18:                   \$ 120.00
- Carpet cleaning (with receipt):       \$ 96.00
- Total:                                   \$1776.00

The tenant testified that he moved out because due to a number issues concerning the unit, but in particular the presence of pets contrary to the tenancy agreement. He stated that at the start of the tenancy the landlord told him there were no pets. The tenant noticed that tenants did have dogs and cats and brought it to the landlord's attention. The tenant said that the landlord told him to address his concerns with the pet owners. The tenant said that he is highly allergic to pets, that he placed his health as priority and decided to move out early.

The landlord argued that he did not tell the tenants that there were no pets in the building. He testified that he always verifies the pet's size and its' disposition before allowing a tenant to bring any animal in the building.

### Analysis

Concerning Clause 18 of the tenancy agreement; Section 6(3)(b) of the Act states in part that a term of a tenancy agreement is not enforceable if the term is unconscionable. The Regulation defines "*unconscionable*" as a term of a tenancy agreement that is oppressive or grossly unfair to one party.

I find no basis under the Act to impose a fee for terminating a periodic tenancy within less than six months. Therefore I find this term of the agreement unconscionable and I dismiss this portion of the landlord's claim.

The tenant did not dispute giving the landlord less than the one month's notice required by statute. Section 45(3) of the Act states in part that a tenant may end a periodic tenancy on a date that is after the date the landlord receives the notice if the landlord failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period **after the tenant gives notice of the failure.**

The tenant took exception with the pets, stating that the agreement did not allow for pets. The tenancy agreement states:

*"No pets, other than what is agreed to at the time of the rental agreement".*

I do not agree with the tenant's submission that this clause means that no pets were allowed. It does suggest that pets are a subject of discussion at the start of the tenancy wherein the landlord reserves the right to approve or disapprove. The tenant did not give the landlord written notice of his concerns with pets in the building, and chose to end the tenancy early. Rather, the remedy would be for the tenant to seek assistance through dispute resolution to resolve the issue if the landlord failed to address the problem. By giving notice on November 17<sup>th</sup>, according to the Act the tenancy should have ended on December 1st, 2010 and I find that the landlord is entitled to that month's rent. The landlord provided evidence of advertising the unit in November and December 2010 to minimize his loss, and found a new tenant for February 2011. I grant the landlord's claim of \$780.00 for December 2010 and I dismiss his claim for the month of January 2011.

The tenancy agreement states that the tenant is responsible to have the carpets professionally cleaned at the end of the tenancy.

The tenant agreed to this term when he signed the agreement. The landlord produced a receipt for \$96.00 and I award him that claim.

### Conclusion

The landlord established a claim of \$876.00. Since he was partially successful, I grant him partial recovery of the filing fee for the sum of \$25.00 and a claim totalling \$901.00. At the tenant's consent, the landlord has kept the security deposit and pursuant to Section 67 of the Act, I grant the landlord a monetary order for the balance of \$511.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: April 08, 2011.

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Residential Tenancy Branch