

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for unpaid rent, for loss of rental income, to keep all of the security deposit and recovery of the filing fee. The Tenant has filed for a monetary order for the return of the pet damage and security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to a monetary order?

### Background and Evidence

This tenancy began on August 1, 2010 on a fixed term tenancy for 12 months until July 31, 2011 as shown in the Tenant's submitted complete copy of the signed tenancy agreement. The Tenant gave their notice to vacate in writing on March 22, 2011 to vacate on May 1, 2011 as provided in the copy submitted by the Tenant. The Tenant's stated that they moved out on April 8, 2011. The Landlord currently holds a \$406.50 security deposit and \$406.50 pet damage deposit paid at the beginning of the tenancy. The monthly rent at the end of the tenancy was \$813.00 payable on the 1<sup>st</sup> of each monthly.

The Tenant is seeking the return of both the security and pet damage deposit of \$406.50 each, totalling \$813.00 as the Landlord did not apply within 15 days of the end of the tenancy. The Landlord applied for dispute resolution on May 10, 2011.

The Landlord is claiming a breach of the tenancy agreement. The Landlord states that the Tenant's breached the agreement by giving a notice to vacate on March 22, 2011 to move out on May 1, 2011, when the fixed term tenancy ends on July 31, 2011. The Landlord states that they were able to mitigate their losses by re-renting the unit starting on May 15, 2011. The Landlord is seeking a monetary order for unpaid rent of \$813.00 for April 2011. The Landlord is further seeking compensation for loss of rental income

for the month of May 2011, pro-rated to May 15, 2011 for the amount of \$410.70. The Tenant has not disputed the Landlord's claims.

### Analysis

As both parties have attended the hearing by conference call and have referred to the other party's evidence, I am satisfied that both have been properly served with the notice of hearing and evidence packages.

Based upon the direct and submitted documentary evidence provided by both parties, I find that both parties have breached this tenancy agreement. Pursuant to Residential Tenancy Policy Guideline #17 (8), in cases where both the Landlord's right to retain and the Tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. As such, I find that the Tenant's claim is dismissed and the Landlord has established a claim for unpaid rent and loss of rental income. The Tenant ended the tenancy pre-maturely as shown in the Tenant's letter of notice to vacate on March 22, 2011. I find that the Landlord has established a claim for \$813.00 in unpaid rent for April 2011 and a pro-rated loss (\$813.00 divided by 31 days multiplied by 14 days) of rental income of \$367.16. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the pet damage deposit and security deposit totalling, \$813.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$417.16. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

### Conclusion

The Landlord is granted a monetary order for \$417.16.  
The Landlord may retain the security and pet damage deposit.

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: August 19, 2011.

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Residential Tenancy Branch