



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for damage to the rental unit; 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 landlord stated that she was not claiming for the damages to the suite, but for the tenant having more occupants than specified in the tenancy agreement, and for these co-tenants' failure to pay additional rent. This was clarified with the tenant's agent and the landlord was allowed to present evidence concerning her claim for unpaid rent. It was understood that accordingly, the landlord's documentary evidence concerning the condition of the suite would not be considered in my decision.

### 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 a two bedroom suite in a single detached home. Pursuant to a written agreement, the month to month tenancy started on March 7<sup>th</sup>, 2011. The rent is \$1400.00 per month and the tenant paid a security deposit of \$700.00. The landlord pointed to two clauses in the tenancy agreement; one stating that only 2 occupants were allowed to move in; and one stating that over holding tenants will pay an extra full month's rent to the landlord. She stated that the tenant allowed her mother, father, sister, and three additional students to move into the suite. She said that they all moved out on June 6<sup>th</sup>, 2011 without giving proper notice to end the tenancy.

The tenant's agent testified that the tenant gave the landlord verbal notice on May 6<sup>th</sup>, 2011 that the tenancy would possibly end on June 6<sup>th</sup>, 2011, depending on the tenant's parents' ability to be approved for a mortgage. The tenant's agent stated that the landlord was not diligent in following up with that notice and failed to stay in touch with the tenant.

### Analysis

I find that the terms of the landlord's tenancy agreement are contradictory: on one hand she set a limit of only two occupants; and on the other hand she requires a full month's rent from additional occupants, which she defines as "overholding" tenants. The Act defines "overholding tenant" as a tenant who continues to occupy the rental unit after the tenancy is ended. This did not occur and the landlord's definition is not congruent with the Act. I find the landlord's terms ambiguous and I dismiss this portion of her claim.

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice.

On the evidence I find that the tenant failed to provide proper written notice to end tenancy. I do not accept that verbal notice of a possibility to end the tenancy on a date that does not even align with a proper date by which the tenancy could end as compliant with the Act. The landlord was able to re-rent the unit on June 22<sup>nd</sup>, 2011 and lost three weeks of rental income. Based on \$1400.00 per month the landlord's loss for three weeks is pro-rated at \$1050.00. I find that the landlord is entitled to recover that loss.

### Conclusion

The landlord established a claim of \$1050.00. Since she was partially successful, I grant the landlord \$25.00 as partial recovery of the filing fee for a claim totalling \$1075.00. I authorize the landlord to keep the tenant's \$700.00 security deposit. Pursuant to Section 72 of the Act, I set off the amount awarded to the landlord against the tenant's security deposit and grant the landlord a monetary order for the balance of \$350.00.

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: October 25, 2011.

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Residential Tenancy Branch