



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid or loss of rent and authorization to retain the security deposit and pet deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

As a procedural matter, I determined that the landlord had named a male occupant as a respondent in filing this application. The application was amended to name the female tenant as the only respondent.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid or loss of rent for the month of July 2011?
2. Is the landlord authorized to retain the security deposit and/or pet deposit?

### Background and Evidence

I was provided the following undisputed evidence. The month-to-month tenancy commenced January 1, 2011 and the tenant was required to pay rent of \$1,860.00 for use of the residential property. This payment included use of a barn valued at \$300.00 per month, and utilities of \$60.00 per month. The tenant paid a security deposit of \$930.00 and a pet deposit of \$500.00. On May 25, 2011 the tenant's spouse sent the landlord an email informing the landlord the tenant would be vacating at the end of June 2011. The landlord started advertising the rental unit at the end of May 2011. On May 31, 2011 the tenant posted a Notice to End Tenancy on the landlord's door. The landlord received it the morning of June 1, 2011. The tenant vacated the rental unit June 30, 2011.

In filing the application the landlord requested recovery of \$1,860.00 in unpaid rent for the month of July 2011. During the hearing the landlord acknowledged that she moved

out of her residence and moved into the rental unit July 15, 2011. The landlord was agreeable to reducing the claim to one-half of July's rent. The landlord's position was that the tenant gave late notice to end tenancy, made showings to prospective tenants difficult, and communicated to the landlord that she may not vacate June 30, 2011.

The tenant submitted that she intended to personally serve the landlord with her Notice to End Tenancy on May 31, 2011 but the landlord did not answer the door even though she was home. The tenant was of the position she tried confirming with the landlord whether her notice would be acceptable for June 30, 2011 but that the landlord kept changing her mind. Accordingly, the tenant was uncertain as to whether she would be held accountable for July's rent and whether she should return possession June 30, 2011.

The tenant denied that she refused the landlord entry to show the unit to prospective tenants if the landlord gave her proper notice; however, the tenant acknowledged that her daughter had told the landlord and prospective tenants to leave during a showing in June.

The tenant pointed to an advertisement placed for the rental unit dated May 30, 2011 whereby the landlord is attempting to increase the rent by \$200.00 per month. The landlord acknowledged the advertisement was for the rental unit and that she posted the advertisement after receiving the informal notice to end tenancy from the tenant's spouse.

The tenant submitted that the landlords moved into the rental unit before July 15, 2011. The tenant based this submission on her father telling the tenant that he saw new tenants at the landlord's residence July 15, 2011 and her daughter telling her of a party at the rental unit in early July 2011.

The landlord denied moving into the rental unit before July 15, 2011 and explained there was an outdoor party sometime after July 17, 2011 and that the new tenants moved into the landlord's former residence starting the 3<sup>rd</sup> week in July 2011.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In order for a tenant to end a month-to-month tenancy the tenant is required to give the landlord at least one full month of written notice. In order to end a tenancy June 30, 2011 the tenant is required to give the landlord written notice no later than May 31, 2011. Based upon the evidence before me, I accept that the landlord received the tenant's notice to end tenancy, in writing, June 1, 2011 and this is late notice to end the tenancy effective June 30, 2011. Therefore, I find the landlord has shown that the tenant violated the Act in this regard and has met the first part of the criteria outlined above.

A violation of the Act does not automatically entitle a party to compensation; therefore, I proceed to consider the landlord's entitlement to compensation considering parts two, three and four of the criteria outlined above. I refer to the advertisement of the rental unit dated May 30, 2011 as a significant factor in reaching my decision for the two reasons as provided below.

The advertisement indicates the rent is \$1,700.00 plus utilities and use of a barn is available for an additional \$300.00 per month. The advertisement indicates the rental unit is available July 1, 2011. The advertisement demonstrates that the landlord began advertising and took action to re-rent the unit based upon the informal notice received from the tenant's spouse in late May 2011. Therefore, I find I am unable to conclude that the tenant's late written notice to end tenancy is the reason the landlord incurred a loss of rent for July 2011 as advertising efforts commenced before the end of May 2011.

The advertisement also demonstrates that the landlord attempted to increase the rent by more than an insignificant amount. I find it is likely that a \$200.00 per month rent increase as a reasonably likely factor in not attracting new tenants for the rental unit. Therefore, I have considerable doubt as to whether the landlord took reasonable steps to minimize the loss of rent for July 2011.

In light of the above, I find the landlord has failed to meet parts two and four of the criteria outlined above and I dismiss the landlord's claims against the tenant for loss of rent for July 2011.

Although I heard disputed testimony as to whether the tenant denied or interfered with the landlord's access to the rental unit during June 2011 I find that issue not sufficiently related or relevant to the matter before me. Where a tenant denies the landlord access to a rental unit despite a landlord's proper notice of entry, the Act provides a specific remedy for the landlord under section 47 of the Act, which is to end the tenancy. The Act does not provide for compensation to landlords for such actions by a tenant. Accordingly, I find it unnecessary to determine whether access was denied by the tenant, and if it was, whether such actions inhibited the re-rental of the unit.

Since I have dismissed the landlord's claims against the tenant I order the landlord to return the tenant's security deposit and pet deposit to her. The tenant is provided a Monetary Order in the amount of \$1,430.00 to ensure payment is made. To enforce payment, the Monetary Order must be served upon the landlord and may be filed in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord's application has been dismissed and the landlord is ordered to return the security deposit and the pet deposit to the tenant. The tenant is provided a Monetary Order in the amount of \$1,430.00 to serve upon the landlord.

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 11, 2011.

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Residential Tenancy Branch