



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

Both landlords and the tenant attended the conference call hearing, gave affirmed testimony, and the landlords provided evidence in advance of the hearing to the tenant and to the Residential Tenancy Branch. The parties were also given the opportunity to cross examine each other on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Are the landlords entitled to a monetary order for damage to the unit, site or property?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

This month-to-month tenancy began on July 1, 2011 and ended on September 27, 2011. Rent in the amount of \$1,100.00 per month was payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$475.00. The tenancy agreement, a copy of which was provided prior to the hearing, requires a pet damage deposit in the amount of \$300.00, although the tenant did not pay that deposit to the landlords. The rental unit is a house and was occupied by the tenant and the tenant's spouse; the house also contained another rental unit occupied by another tenant.

The landlords testified that the tenant is in arrears of rent for the months of August and September, 2011, and the landlords also claim loss of revenue for the month of October. The tenant had no work and the landlords hoped that by issuing a notice to end tenancy for unpaid rent, the tenant may be able to speed up the process of collecting employment insurance. The tenant's daughter had occupied the rental unit prior, and the landlords were trying to help the tenant to salvage the tenancy.

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 23, 2011 was provided for this hearing. The notice is in the approved form and contains an effective date of vacancy of October 2, 2011. The notice states that the tenant failed to pay rent in the amount of \$2,200.00 that was due on the 1st of August and September, 2011. In the space of the form that is optional for unpaid utilities, the wording is changed to late charges, and states that the tenant failed to pay late charges in the amount of \$60.00 following written demand on September 12, 2011. The form also has written on it 'pet damage deposit of \$300 – due August 1, 2011.' A Proof of Service form was also provided for this hearing and it states that the landlords served the notice to end the tenancy on the tenant personally on September 23, 2011. The tenancy agreement does not contain a provision for late fees.

The landlords further testified that they were not told that the tenants were moving on September 27, 2011. They saw the moving van, and the tenant told the landlords that the tenants were moving belongings into storage. The landlords sent an email to the tenant on September 27, 2011 and the tenant replied on October 1, 2011 stating that the tenant would start to pay the landlords \$500.00 per month towards the arrears and would provide a forwarding address once the tenant had one; the tenants had moved to Alberta for employment. On October 4, 2011 one of the landlords spoke to the tenant who was at the tenant's place of employment in Alberta.

The rental unit was advertised by posting on Facebook and Castanet and the landlords received no calls. The rental unit is on a busy street, and the landlords testified that signs have proven to be the most effective form of advertisement in the past, a sign was erected, and the unit was re-rented just before December 1, 2011.

The landlords also testified that the tenant left the rental unit without cleaning it and left all unwanted belongings. The landfill is about 10 or 12 kilometres from the rental unit, and the minimum charge for dumping is \$6.00 or \$8.00 but no receipt has been provided. The landlords provided a copy of the move-in condition inspection report and photographs of the inside and outside of the rental unit which they testify is what the rental unit looked like after the tenant departed. The photographs show food in the fridge, piles of debris and miscellaneous items inside and outside. The move-in condition inspection report shows all items as good or fair, and a few minor repairs

required. The move-out portion of the condition inspection report has not been completed.

The landlords claim \$3,300.00 for unpaid rent and loss of revenue, \$60.00 for late fees, \$20.00 for the landfill charges and fuel.

The tenant testified that work had been obtained in Alberta prior to receiving the notice to end tenancy, although the tenant does not recall the date. The tenant agrees owing the landlords 2 months' rent, but not 3 months'; the landlords issued a notice to end tenancy with an effective date of October 2, 2011. The tenant vacated the rental unit on September 27, 2011.

### Analysis

In the circumstances, I take the position of the landlords that the notice to end tenancy issued by the landlords was issued for the purpose of assisting the tenants in speeding up the process of collecting employment insurance. It is not clear whether or not that happened, however, the *Act* states that a person may not withdraw a notice to end tenancy without the consent of the other party. The *Act* also states that once the notice is issued by the landlord, the tenant has 5 days to pay the rent in full or apply to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which in this case is October 2, 2011. The tenant moved from the rental unit prior to that.

In considering whether or not the landlords are entitled to an award for loss of revenue for the month of October, 2011, I refer to the Residential Tenancy Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent. Non-payment of rent is considered to be a fundamental breach of a tenancy agreement, and where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord can accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment, or accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy. In this case, the landlords elected to end the tenancy. The policy also states that filing a claim for damages after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances, such as the length of time since the end of the tenancy, knowledge of the tenant's whereabouts, and whether there had been any prejudice to the tenant as a result of the passage of time. In this case, the landlords did not hesitate to file an application for dispute resolution and filed it within 3 days of the date the tenant vacated the rental unit.

The policy also states that as a general rule, the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement, including compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In a month-to-month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. The landlord is required to mitigate any loss suffered by advertising the rental unit for rent as soon as possible. In this case, the landlords had to clean the rental unit and remove unwanted items prior to re-renting. The tenant breached the *Act* by not leaving the rental unit reasonably clean and undamaged except for normal wear and tear. The landlords advertised the unit for rent on Facebook, Castanet and placed signs on the property within 3 days of learning that the tenant had vacated. They also testified that the rental unit is on a busy street and placing signs on the property have proven to be the most effective in the past. The unit was re-rented sometime prior to December 1, 2011. I find that the landlords have mitigated the loss of income, and the tenant is liable for rent for the month of October, 2011.

The tenant obviously owes the landlord 2 months' rent, and the tenant does not dispute that. The tenancy agreement does not contain a provision for late fees, and I find that the tenant did not agree to that, and therefore, the landlords are not entitled to the \$60.00 claim.

With respect to damages, the *Act* requires the landlord to provide the tenant with at least 2 opportunities to complete a move-out condition inspection report and may complete it without the tenant if the tenant has abandoned the rental unit. In this case, the landlord issued a notice to end tenancy, which expects vacancy on October 2, 2011, and the tenant moved without telling the landlords 5 days earlier. However, the tenant did not dispute the landlords' testimony that the rental unit was not cleaned and that unwanted items were left behind, nor did the tenant dispute the photographs, and I find that the landlords' claim for \$20.00 is more than reasonable.

The landlords hold a security deposit on behalf of the tenant in the amount of \$475.00, which I find should be set off from the rent due.

In summary, I find that the landlords are entitled to the claim of \$2,200.00 in unpaid rent, \$1,100.00 for loss of revenue for the subsequent month, \$20.00 for the landfill, and recovery of the \$50.00 filing fee for the cost of this application, for a total of \$3,370.00, which is set off by the security deposit of \$475.00, and the total monetary order awarded to the landlords is \$2,895.00 as against the tenant.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the security deposit in the amount of \$475.00 and I grant the landlords a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the difference of \$2,895.00. This order is final and binding and may be enforced.

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: January 5, 2012.

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Residential Tenancy Branch