



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

At the tenant's request, the landlord agreed to a rescheduling of the original hearing scheduled for December 7, 2011. Both parties attended the rescheduled hearing on January 30, 2012 and were given a full opportunity to be heard, to present evidence, to make submissions and to cross-examine one another. The parties agreed that the tenant's parents spoke with the landlord in late August 2011 to let the landlord know that the tenant vacated the rental unit shortly after her common law partner and co-tenant tragically and unexpectedly died. As the tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by registered mail on September 21, 2011, I am satisfied that the landlord served notice of his application and this hearing in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all of the tenant's pet damage and security deposits? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenant is one of two co-tenants who entered into a periodic tenancy commencing on October 1, 2010. Monthly rent according to the written tenancy agreement was set at \$995.00 by the end of this tenancy, payable in advance on the first of each month. The landlord continues to hold a \$457.50 pet damage deposit paid for an earlier rental unit in this rental property by the co-tenants on October 27, 2008, a \$460.00 security deposit paid on April 1, 2008 for the earlier rental unit, and a further \$40.00 security deposit paid on September 1, 2010.

The parties agreed that the tenant moved out of the premises in late August 2011 after the August 26, 2011 death of her common law partner and co-tenant. The parties agreed that all of the possessions from the rental unit were removed by the tenant and occupancy reverted to the landlord by September 11, 2011.

The landlord applied for a monetary award of \$1,030.00 to recover unpaid rent for September 2011, and the \$50.00 filing fee for his application.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for September 2011, the tenant would have needed to provide her notice to end this tenancy before August 1, 2011. Section 52 of the *Act* requires that a tenant provide this notice in writing.

The unfortunate events of August 26, 2011 led to the tenant's decision to end this tenancy without providing the required notice to the landlord. Due to the tenant's distraught situation when she lost her common law partner and co-tenant, the tenant's parents communicated with the landlord to let him know she was ending her tenancy. While the tenant's mother who gave testimony at this hearing said that she provided written notice to end this tenancy to the landlord when she spoke with him on August 29, 2011, she kept no copy of that written notice. Later in the hearing, the tenant's mother referred to a second written notice she provided to the landlord on the tenant's behalf. The landlord denied having received any written notice to end this tenancy.

The tenant's mother also signed a November 28, 2011 letter, dated more than two months after the tenancy ended and the landlord applied for dispute resolution. In that letter, the tenant's mother wrote as follows:

*...He (the landlord) asked K (the tenant) to write a letter. I told him K is unable to write a letter because...she is in a state of shock. I haven't heard any thing from him except he asked my daughter again to write a letter that is vacating a place...*

If written notice to end this tenancy were provided by the tenant's mother prior to the end of this tenancy as she maintained in her oral testimony, I expect that the tenant's mother would have referenced this in her November 28, 2011 letter. The tenant's mother's November 28, 2011 letter makes no reference to any written notice she provided to the landlord to end this tenancy. Rather, her November 28, 2011 letter

supports the landlord's claim that he requested a written notice to end tenancy from the tenant, as is required by the *Act*, and did not receive one.

I find that any notice that the tenant's mother gave, either written or oral, occurred well after the August 1, 2011 deadline for doing so in order to avoid the tenant's responsibility for September 2011 rent. Based on the undisputed evidence, both oral and written, I find that the tenant did not comply with the provisions of section 45(1) and 52 of the *Act* in failing to provide written notice to end tenancy before August 1, 2011 in order to avoid responsibility for rent for September 2011.

There is undisputed evidence that the tenant did not pay any rent for September 2011, the last month of her periodic tenancy. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of this periodic tenancy agreement and the *Act*. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The key issues in dispute in considering this application are as follows:

1. Did the landlord comply with the responsibility pursuant to section 7(2) of the *Act* to mitigate the tenant's loss?
2. Was there an oral agreement between the landlord and the tenant's mother that sets aside the tenant's responsibility for rent for the period from September 12 until September 30, 2011?

With respect to the first issue, the landlord testified that he placed an advertisement on the Craigslist rental site on or about September 3, 2011. He said that he also placed a sign on the rental property on September 2<sup>nd</sup> or 3<sup>rd</sup>, 2011 advertising the availability of the rental unit. He testified that he was successful in locating a new tenant who took occupancy of the rental unit as of October 1, 2011, paying the same monthly rent as he was receiving prior to September 1, 2011.

The tenant's advocate questioned the extent to which the landlord truly attempted to mitigate the tenant's loss for September 2011. She noted that the landlord had not entered into written evidence a copy of the Craigslist advertisement. The landlord testified that he does not obtain a copy of such advertisements. The tenant's advocate also referred to the tenant's photographic evidence that showed that the landlord did not place a sign on the rental property as he claimed at the time in question. I noted that the print quality of the tenant's faxed photographs were so poor that it was impossible to attach any weight to this evidence.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for September 2011. I have taken into consideration that the tenant did not yield vacant possession of the rental premises and surrender the keys to the landlord until September 11, 2011. I have also given weight to the late timing of the tenant's notice to end this tenancy, the nature of the notice (i.e., oral notice by the tenant's mother), the failure of the tenant to provide any copy of the alleged written notice given by the tenant's mother and the difficulties in finding new tenants interested in occupying a rental unit during a partial month. I am satisfied that there was no undue period of time between the September 11, 2011 end to this tenancy and the October 1, 2011 commencement of a new tenancy for this rental unit. For these reasons, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

Turning to the second issue as outlined above, the landlord and the tenant's mother provided conflicting evidence regarding the claim by the tenant's mother that she had an oral agreement with the landlord to limit the tenant's exposure to rent for September 2011 to a pro-rated amount based on the number of days when she was in possession of the rental unit. The tenant's mother testified that the landlord agreed to her proposal that the landlord would not hold the tenant responsible for the entire rental for September 2011. She said that she estimated that it would take five to ten days to clean the rental unit and remove the possessions. She said that she left the keys for the landlord on September 9 or 10, 2011. Although the tenant's advocate conceded that there was no written agreement with the landlord with respect to this matter, she asserted that the oral agreement with the landlord was valid and should form the basis for dismissing or reducing the landlord's claim for unpaid rent for September 2011.

The landlord testified that there was no such oral agreement. He said that he only agreed to try to re-rent the premises for September 2011 if he could. He said that he agreed to reduce the tenant's responsibility for September 2011 rent only if he were successful in renting the premises for a portion of that month.

The tenant also submitted written evidence of a November 27, 2011 letter written by her father. In that letter, her father outlined the circumstances at the end of this tenancy and confirmed that he and the tenant's mother spoke with the landlord possibly on August 29, 2011 to advise that his daughter, the tenant would be vacating the rental unit immediately. He included the following description of the agreement he heard the landlord make with respect to September 2011 rent:

*...Mr. S (the landlord) stated that as soon as the furniture was out, he would then do his best to rent out the apartment as early as possible, and that K would not*

*have to pay rent for whatever part of September that the apartment was rented out to a new tenant.*

I find that this written evidence submitted by the tenant aligned very closely with the landlord's account of the agreement he entered into with the tenant's parents at the time that they alerted him to her intent to end this tenancy. At the hearing, I asked the tenant's mother to comment on this written account provided by her husband of the same oral agreement referred to in her oral testimony. The tenant's mother said that her husband was not present during the entire meeting with the landlord and was parking the car when the landlord made the oral agreement that varied from the one described in her husband's statement.

Section 44 of the *Act* establishes the only methods whereby a tenancy can end. Section 44(1)(c) of the *Act* requires that any mutual agreement between the landlord and the tenant must be in writing. In this case, I distinguish that the alleged agreement between the parties was neither an oral agreement to end a tenancy, nor was it between the landlord and the tenant. However, the landlord clearly takes issue with the tenant's mother's portrayal of their oral agreement. For this very reason, I believe that a written agreement would be necessary if someone other than the legally delegated signatory to a residential tenancy agreement attempts to negotiate a reduction in the tenant's exposure to losses arising at the end of a tenancy. I believe that this approach to interpreting oral agreements at the end of a tenancy is consistent with the direction provided by section 44(1)(c) of the *Act* requiring that mutual agreements to end tenancy must be in writing and signed by the landlord and the tenant.

As outlined above, the landlord had a duty under section 7(2) of the *Act* to attempt to mitigate the tenant's losses by trying to rent the premises to another tenant as soon as possible. If successful, the landlord would not claim against that portion of the rental loss he had recovered from the new tenant. I find that the landlord's testimony is entirely consistent with this standard duty to mitigate the tenant's losses in accordance with section 7(2) of the *Act*. His testimony is also fully supported by the tenant's father's letter signed by him on November 27, 2011 and submitted into written evidence by the tenant. On a balance of probabilities, I find the landlord's evidence on this point far more compelling and consistent with the other written evidence than the testimony provided by the tenant's mother who claimed to be the only person privy to the oral agreement she entered into with the landlord. I find the tenant's mother's version of events is at odds with the other written evidence and the standard responsibilities placed on a landlord by section 7(2) of the *Act*.

In the absence of any written agreement between the landlord and the tenant to end this tenancy on the unusual terms claimed by the tenant and the tenant's mother, I find that the tenant's responsibilities for rent owing are those set out in sections 45(1) and 52 of the *Act*. For these reasons, I find that the landlord is entitled to a monetary award of \$995.00 in unpaid rent owed by the tenant for September 2011.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

I allow the landlord to retain all of the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. Interest is calculated on the basis of a \$460.00 security deposit paid on April 1, 2008 and a pet damage deposit payment of \$457.50 paid on October 27, 2008. No interest is payable on the additional security deposit of \$40.00 paid on September 1, 2010.

### Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenant's pet damage and security deposits:

Item	Amount
Unpaid September 2011 Rent	\$995.00
Less Security Deposit plus Interest April 1, 2008 Payment - \$460.00 + \$5.18 = \$465.18; + October 27, 2008 Payment - \$457.50 + \$1.24 = \$458.74; + September 1, 2010 Payment - \$40.00 = \$962.68	-962.68
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$82.32</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 3, 2012

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Residential Tenancy Branch