



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on December 19, 2011. I am satisfied that the landlord served this package in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

According to the terms of this periodic tenancy that the tenant entered into on or about September 27, 2011, the tenant was supposed to take occupancy of the rental premises on October 1, 2011. Monthly rent set at \$500.00 was paid by the tenant for October 2011. The tenancy required the tenant's payment of a \$250.00 security deposit. Although the tenant forwarded the landlord her \$250.00 security deposit cheque issued by the Ministry of Social Development (the Ministry) on or about September 30, 2011, she did not sign this cheque payable to her. The landlord testified that he could not cash this cheque because it was not made out to him. He said that he continues to hold this non-negotiable cheque made out to the tenant. The parties agreed that the tenant has not made any security deposit payment to the landlord that he can cash at his bank.

The parties agreed that the tenant refused to move into the rental premises because she found the premises were dirty and uninhabitable. The landlord undertook repairs and renovations which were completed by late October. The tenant advised the landlord by the last week of October 2011 that she would not be taking up residency in the rental unit. The tenant did not dispute the landlord's oral and written evidence that he repeatedly asked her to submit a written notice to end this tenancy. To this date, she has not issued a written notice to end her tenancy.

The landlord said that he commenced efforts to rent the premises to another tenant during the last week of November 2011, although he was certain the tenant would not be taking possession of the rental unit by the first week of November. He said that he was able to locate a new tenant who commenced a new tenancy by December 1, 2011.

The landlord applied for a monetary award of \$750.00 plus the recovery of his \$50.00 filing fee from the tenant. His application included his request for recovery of \$500.00 he lost in November 2011 rent due to the tenant's refusal to issue him a written notice to end her tenancy. He also requested \$250.00 for the unpaid security deposit.

### 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. The *Act* also provides that a tenancy commences on the date that a residential tenancy is entered into, whether or not the tenant ever actually occupies the rental unit. 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 November 2011, the tenant would have needed to provide her notice to end this tenancy before October 1, 2011. Section 52 of the *Act* requires that a tenant provide this notice in writing. For these reasons, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for November 2011, the last month of her periodic tenancy. 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.

Based on the evidence presented, I find that the landlord knew that the tenant was not planning to occupy the rental unit late in October 2011. Despite her failure to provide written notice to end her tenancy, the landlord is still under a duty to attempt to minimize

her loss. By waiting until late November 2011, to commence his efforts to find another tenant, I find that the landlord did not discharge his duty under section 7(2) of the *Act* to minimize the tenants' loss. As a result of the landlord's lateness in initiating his efforts to re-lease the premises to someone else, he forfeited his right to claim for his loss of rent for November 2011. For this reason, I dismiss the landlord's claim for a monetary award for loss of rent of \$500.00 for November 2011, without leave to reapply.

I have also considered the landlord's application to recover \$250.00 for the tenant's failure to provide him with a negotiable payment for her security deposit. As her tenancy has ended and the landlord admitted that she was not responsible for any damage arising out of this tenancy, I dismiss the landlord's application for a monetary award of \$250.00 for the security deposit that should have been paid at the commencement of this tenancy. As the landlord testified that he continues to hold the \$250.00 cheque that was issued by the Ministry to the tenant, I order the landlord to return this cheque by registered mail to the tenant at the mailing address he used to serve the tenant with his application for dispute resolution as soon as possible. If the landlord does not return this cheque to the tenant within 15 days, the tenant may apply for dispute resolution to obtain any losses that she may have suffered as a result of the landlord's failure to do so.

As the landlord has been unsuccessful in his application, he bears the cost of his filing fee for this application.

### Conclusion

I dismiss the landlord's application in its entirety without leave to reapply.

I order the landlord to return to the tenant the Ministry's \$250.00 cheque provided to him in September 2011 for the tenant's security 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: February 28, 2012

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Residential Tenancy Branch