



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNR, MNSD, MNDC, FF

### **Introduction**

This matter proceeded by way of a conference call hearing on February 06, 2012, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord's Application requested a monetary order for unpaid rent, compensation for damages and losses under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to keep the security deposit and pet damage deposit. The Tenant's Application a monetary order for return of the security deposit and pet damage deposit, compensation for damages and losses under the Act, regulation or tenancy agreement, and recovery of the filing fee.

The parties both testified that they had received a copy of the Notice of Hearing and Application made by the other party.

Both parties participated in the conference call hearing and were given full opportunity to be heard, to present evidence and to make submissions.

### **Preliminary Matter(s)**

The parties had a previously scheduled hearing on January 09, 2012 of their cross-applications for dispute resolution, which the Landlord did not attend. The hearing of January 09, 2012 resulted in a decision on January 12, 2012 which provided the Tenant a monetary order for \$1,800.00 representing return of a security deposit of \$875.00, a pet damage deposit of \$600.00, return of a payment of \$275.00, and a \$50.00 filing fee.

The Landlord applied for Review Consideration as they were unable to attend the prior hearing due to circumstances that could not be anticipated and were beyond the Landlord's control. The Landlord was granted a new hearing for February 06, 2012. The Review Consideration decision of January 17, 2012 suspended the decision of January 12, 2012, until the Review hearing has been completed.

At the Review hearing the Parties confirmed the evidence and documents exchanged prior to the first hearing January 09, 2012. The Tenant raised the issue that the Landlord had submitted an amended claim and documents, 59 pages in total, to her either on January 03, 2012 or January 04, 2012. The Tenant had not raised this issue at the hearing on January 09, 2012. The decision of January 12, 2012 indicated that the Dispute Resolution Officer who conducted the hearing on January 09, 2012, had considered submissions from the Landlord that had been received at our office on January 04, 2012. Our records confirm that the Landlord has also provided these documents to one of our offices on January 04, 2012, and paid an additional filing fee of \$50.00 for increasing the amount claimed to over \$5,000.00. When I examined the file I received at the hearing, I note that not all of the pages faxed by the Landlord on January 04, 2012 to our office made it to the hearing file. At the Review hearing both parties were ready and preferred to proceed rather than adjourn, as a result I decided to proceed with the hearing and I advised the parties that I was allowing the Landlord to re-fax our office the 59 pages of documents so that I would have a complete copy of the same documents which both parties already had for over one month. The Tenant did not request an adjournment or object to my decision to accept the documents and proceed with the Review hearing as scheduled on February 06, 2012. The Landlord faxed the 59 pages (which included the cover sheet) to my office, which I received while the hearing was occurring, and I was able to discuss the documents with the parties during the hearing.

### **Issue(s) to be Decided**

Is the Landlord entitled to a monetary order for unpaid rent, compensation for damages and losses under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to keep the security deposit and pet damage deposit?

Is the Tenant entitled to a monetary order for return of the security deposit and pet damage deposit, compensation for damages and losses under the Act, regulation or tenancy agreement, and recovery of the filing fee?

### **Background and Evidence**

The parties agreed that they had a written tenancy agreement which commenced on June 04, 2011 and ended on September 30, 2011 when the Tenant moved out. The Landlord provided a copy of the written tenancy agreement and addendum signed by the Tenant in evidence. The tenancy agreement states that the rent is \$1,750.00 per month, due on the first of the month, and that the tenancy is for a fixed term to end on February 29, 2012. The tenancy agreement states that the Landlord holds a security

deposit from the Tenant in the amount of \$875.00 and a pet damage deposit in the amount of \$600.00, for a total of \$1,475.00 in deposits. The Tenant did not provide her forwarding address in writing to the Landlord until she served them with an Application for dispute resolution on October 20, 2011. The Landlord filed an Application for dispute resolution on November 03, 2011, within 15 days of receiving the Tenant's forwarding address. The parties agree that the rental unit was clean and in excellent condition at the end of the tenancy.

Tenant claim for security deposit and pet deposit and October rent payment/Landlord claim for Rental income loss

The Tenant testified that the tenancy commenced on June 04, 2011 as she had to find a place to live immediately as she had sold her house and had to move out by June 08, 2011. The Tenant stated that she attempted to negotiate a lower rent and a shorter term with the Landlord, but they would not agree to less than a nine month fixed term ending February 29, 2012. The Tenant stated that the Landlord's agent CT advised her that she could break the tenancy agreement for a fee. The Tenant stated that she signed and received a copy of the tenancy agreement and addendum at the start of the tenancy, however, she did not read the documents fully. The Tenant stated that when she received the proceeds from the sale of her house on June 08, 2011, she realized she had lost her savings and had to cash in her RRSP's. The Tenant stated that her son had bought a house and let her move in with him, as she could no longer afford a rent of \$1,750.00. The Tenant stated that she gave Notice in August 2011 that she would be moving out by September 30, 2011. The Tenant stated that when she gave the Landlord the written notice, she paid \$280.00 on August 31, 2011 as a fee to break the tenancy agreement. The Tenant stated that she gave the Landlord written authorization on October 01, 2011 to keep the security deposit and pet damage deposit totalling \$1,475.00 and paid the Landlord a cheque in the amount of \$275.00, because the Landlord had told her that she had broken the fixed term tenancy agreement and owed rent for October 2011, in the amount of \$1,750.00. The Tenant stated that she later changed her mind and decided that should request the money be returned to her, and she filed an Application for dispute resolution on October 19, 2011. The Tenant stated that she did not read the tenancy agreement or the addendum until after the tenancy ended. The Tenant stated that the Landlord can keep the \$280.00 fee she paid to break the tenancy agreement, however she is requesting \$1,750.00 which represents return of the security deposit and pet damage deposit and rent paid for October 2011. The Tenant is also requesting the \$50.00 cost of the filing fee for her Application.

The Landlord testified that the Tenant broke the fixed term tenancy agreement which she had signed with the Landlord. The Landlord's agent CT attended the hearing, as a

witness for the Landlord, and testified that when she signed the tenancy agreement and addendum with the Tenant, she took the time to explain to the Tenant that she was signing a nine month fixed term tenancy agreement to the end of February 29, 2012. CT stated that she explained to the Tenant that the \$280.00 fee as stated in the tenancy agreement and addendum was for the Landlord's administrative costs if she broke the tenancy agreement, and that if the rental unit did not rent out that the Tenant would be responsible for rent until the end of the tenancy agreement and any further costs. The Landlord stated that the documents signed by the Tenant at the start of the tenancy clearly state that, "if a Tenant terminates the lease early they are responsible for the re-rental fee of \$250.00 +HST + advertising costs + lock changes along with any loss of revenue". CT stated that she specifically had the Tenant initial this clause, and provided a copy in evidence. CT stated that the Landlord did not agree to waive any amounts owed if the Tenant broke the fixed term agreement.

The Landlord stated that they have been advertising for a new tenant and showing the rental unit to prospective tenants for several months now but that they have had no luck in renting it out. The Landlord provided evidence of various forms of advertising they have done regularly in the newspapers as well as on popular rental internet sites since the tenancy ended. The Landlord stated they have even offered the rental unit at a lower rent to try and get it rented out, and other rent incentives, however they have not found a new tenant at this time. The Landlord is claiming rent for October, November, December 2011, and January 2012. The Landlord stated that the Tenant paid \$275.00 in rent and provided them written authorization on October 01, 2011 to keep the security deposit and pet damage deposit to cover the rent for October 2011. The Landlord stated that they should not have to pay any of this back to the Tenant as the Tenant had authorized this in writing on October 01, 2011. The Landlord is seeking rental income loss for the four months for a total of \$7,000.00, and is requesting an order to keep the \$275.00 rent already paid for October 2011 and the \$875.00 security deposit and \$600.00 pet damage deposit, to offset the rental income loss.

#### Advertising costs

The Landlord stated that the \$280.00 fee only covered their administrative costs. The Landlord stated that they are not claiming for the ads they placed in September as this was covered in the \$280.00 fee. The Landlord stated that they have incurred \$100.00 per month in advertising costs for newspaper ads for October, November, and December, for a total of \$300.00.

The Tenant stated that she also tried to help the Landlord find a tenant, but only one person viewed the rental unit in September. The Tenant stated that the \$280.00 fee

she paid to the Landlord should cover these costs and she should not have to pay more.

#### Lock change costs

The Landlord stated that it is their company policy to change the locks whenever a tenant moves out, regardless of whether they receive the keys from the Tenant or not. The Landlord is seeking \$84.00 for this cost and provided a copy of the receipt dated October 13, 2011 for the lock change.

The Tenant stated that she returned a set of keys to the office and left the other set of keys inside the house for the Landlord to pick up. The Tenant stated that the Landlord called her on her cellular phone and requested the fob be returned and she returned this to their office on October 06, 2011. The Tenant stated that she should not be responsible for lock change costs as she returned all keys and fob to the Landlord as requested by the Landlord.

#### Insurance premium for vacant rental unit

The Landlord stated that their insurance premium went up for the months that they have not been able to re-rent the rental unit as it cost more to insure a vacant house. The Landlord is requesting \$196.25 per month for four months October 2011 to January 2012, for a total of \$785.00. The Landlord provided a copy of an email dated January 03, 2012 from their insurer as evidence of the increase in their insurance.

The Tenant disagrees with the Landlord's claim for insurance and stated this was not part of the tenancy agreement signed.

The Landlord is also seeking recovery of the filing fees totalling \$100.00 paid for their Application.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Tenant claim for security deposit and pet deposit and October rent payment/Landlord claim for Rental income loss

I find that the Tenant breached the terms of the tenancy agreement and addendum by breaking the fixed term lease which was until February 29, 2012. The Tenant ended her tenancy September 30, 2011. The Landlord provided evidence of extensive advertising for the rental unit both in the newspaper and on various internet websites and testimony that they had been showing the rental unit, and even offering a lower rent in attempts to obtain a new tenant. I find that the Landlord's evidence supports their claim for rental income loss for October, November, December 2011 and January 2012 in the amount of \$7,000.00 (\$1,750.00 x 4 months). I order the Landlord to retain the security deposit (\$875.00) and pet damage deposit (\$600.00) and the \$275.00 already received from the Tenant for October 2011 rent, for a total of \$1,750.00. I grant the Landlord a monetary order for the balance of rental income loss in the amount of \$5,250.00.

I deny the Tenant's claim for \$1,750.00 representing the security deposit \$875.00, pet deposit \$600.00, and \$275.00 rent payment.

As the Tenant has not been successful in her Application, I find that she is not entitled to recovery of the filing fee.

As a result, the monetary order provided to the Tenant in the prior hearing decision of January 12, 2012 is set aside.

Advertising costs

I find that the Landlord has established the advertising costs claims through testimony and evidence including the receipts and invoices provided. I do not find that the \$280.00 paid by the Tenant to the Landlord as required by the tenancy agreement and addendum, is intended to cover all advertising costs as these are specifically referred to as an additional cost in the tenancy agreement and addendum signed by the parties. I grant the Landlord a monetary order for \$300.00 for advertising costs for October, November and December 2011, which brings the total amount owing to \$5,550.00.

Lock change costs

While the tenancy agreement and addendum state that the Tenant agrees to pay for lock change costs, I do not find that the Tenant caused damages or losses in relation to the locks for the rental unit. The Tenant returned the keys and fob to the Landlord, and the Landlord has failed to provide sufficient evidence to the contrary. It is inconsistent with the requirements of the Act for a Landlord to have a blanket policy to change locks each time a tenancy ends and charge the outgoing tenant for this, when there are no damages to the locks or losses in relation to keys to the rental unit, and in this case the written agreement with the Tenant is also unclear and not specific as to the circumstances in which a the Tenant is agreeing to pay fees for a lock change. I deny the Landlord's claim for the lock change costs.

Insurance premium for vacant rental unit

I find that the Landlord submitted insufficient evidence that they had paid for any insurance premium increases in relation to the rental unit. The Landlord provided a copy of an email dated January 03, 2012 from an insurer with regards to a discussion regarding a potential insurance increase for a vacant rental unit. The Landlord failed to provide any copy of a bill, invoice, or other document they paid in relation to the rental unit. The Landlord's insurance is the cost of doing business and the tenancy agreement and addendum do not specifically address fees or costs in relation to the Landlord's insurance. I deny the Landlord's claim for the insurance premium for the vacant rental unit.

As I find that the Landlord has been successful in part with their claim, I grant the Landlord a monetary order for the filing fees they paid totalling \$100.00. I grant the Landlord a monetary order for \$5,650.00, representing the balance of the rental income loss, advertising fees, and the filing fee.

### **Conclusion**

I dismiss the Tenant's claim for \$1,750.00 representing the security deposit \$875.00, pet deposit \$600.00, and \$275.00 rent payment. As the Tenant has not been successful in her Application, I find that she is not entitled to recovery of the filing fee. As a result, the monetary order provided to the Tenant in the prior hearing decision of January 12, 2012 is set aside.

I dismiss the Landlord's claim for the lock change costs and the insurance premium for the vacant rental unit.

I grant the Landlord's claim for rental income loss for October, November, December 2011 and January 2012, advertising costs for October, November and December 2011, and the filing fee.

I find that the Landlord is entitled to \$7,400.00. As I have ordered that the Landlord retain the security deposit, pet damage deposit, and partial rent received for October 2011, totaling \$1,750.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$5,650.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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 29, 2012.

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Residential Tenancy Branch