



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for monies owed or compensation; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on November 25, 2009 for a 1 year fixed term tenancy beginning on December 1, 2009 that converted to a month to month tenancy on December 1, 2010 for a monthly rent (at the end of the tenancy) of \$825.00 due on the 1<sup>st</sup> of each month with a security deposit of \$410.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on December 2, 2011 with an effective vacancy date of December 15, 2011 due to \$825.00 in unpaid rent that was due on December 1, 2011;
- A copy of a tenant's notice to end tenancy typewritten/prepared by the landlord dated December 6, 2011 giving the tenant's notice to end the tenancy on December 31, 2011 and agreeing to the payment of rent for January 2012 if the landlord is unable to re-rent the unit; and
- A copy of a Condition Inspection Report completed by the landlord only on December 20, 2011 documenting the need for cleaning and painting.

The landlord testified the tenant failed to pay rent for December 2011 and gave 1 Month Notice to the landlord after the start of December and the landlord had been unable to

rent the unit for the month of January as such, the landlord seeks compensation for rent for December 2011 and January 2012.

The tenant testified he gave notice to the landlord but that he also received a 10 Day Notice to End Tenancy for Unpaid Rent from the landlord. The landlord confirmed the 10 Day Notice was issued to the tenant on December 2, 2011 and the tenant provided the tenant's notice to end the tenancy on December 6, 2011. The parties agreed the tenant moved out some time before the effective date of the 10 Day Notice.

The landlord testified the rental unit required painting in some rooms because of marks on the walls and a door was damaged that required repair and painting and that the unit had not been cleaned at all. The tenant testified he did a walk through with the landlord prior to vacating the rental unit and the landlord told him the damage was wear and tear.

### Analysis

Section 46 of the *Act* allows the landlord to end a tenancy when rent remains due on any day after it was due according to the tenancy agreement by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. From the testimony of both parties I find the landlord initiated the ending of this tenancy when the 10 Day Notice was issued to the tenant.

I also accept that the tenant acted on that Notice and vacated the rental unit on or before the effective date of the 10 Day Notice. As such, I find the tenant was not required to provide the landlord notice to end the tenancy under Section 45.

Based on the above, I find the fact that the landlord had the tenant sign a notice to end the tenancy and agreement to pay for rent for the month of January 2012 if the landlord was unable to re-rent the unit in time to be unconscionable and therefore not enforceable.

As such and based on the testimony of both parties I find the landlord is entitled to rent for the month of December 2011, but I dismiss the portion of the landlord's Application seeking rent for January 2012.

I accept the documentary evidence of the landlord confirms the condition of the rental unit at the end of the tenancy and accept the landlord has established the value of these claims for cleaning and painting to be reasonable.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1176.00** comprised of \$825.00 rent owed; \$126.00 cleaning; \$200.00 painting and \$25.00 of the \$50.00 fee paid by the landlord for this application, as the landlord was only partially successful in his claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$410.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$766.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: March 12, 2012.

---

Residential Tenancy Branch