



# 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 was convened by way of conference call in repose to the landlord's application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

From the testimony of the parties I find a previous hearing took place on December 28, 2011 concerning the tenant's application for the return of double the security deposit and a Monetary Order was issued in favour of the tenant. The landlord has now applied to keep the security deposit. *Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the previous hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. The landlord's application in this matter concerns the landlords request for an order to retain the security deposit is therefore dismissed as this matter has already been determined in the previous hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

Both parties agree that this month to month tenancy started on June 01, 2011 and ended on June 30, 2011. Rent for this unit was \$1,000.00 per month due on the first day of each month. The tenant rented the basement unit of this property.

The landlord testifies that the tenant failed to provide written notice to the landlord as agreed under s.14 of their tenancy agreement. The landlord testifies that although the house was up for sale no firm offer had been made on the property prior to the tenancy commencing except an offer that was subject to conditions. The landlord testifies that as the tenant did not give the proper notice to vacate the landlord seeks to recover a loss of rent for July, 2011 to the sum of \$1,000.00

The landlord testifies that he advertised the unit for rent on Craig's List as soon as the tenant gave verbal notice that they were vacating. However, the unit remained empty until it was sold on September 01, 2011.

The tenant testifies that they were moving from another province and were supposed to rent the upper suite but when they met with the landlord the landlord informed the tenant that the landlord had already accepted an offer on the property and the new owners wanted to move into the upper suite. The landlord told the tenant they could live in the basement suite. When the tenant went to move into the basement unit, the tenant testifies that the landlord informed them that the new owners did not want tenants in the house so the tenant testifies they started to look for a property to purchase.

The tenant testifies that they relied on information given to them by the landlord and accelerated there purchase plans and moved from the unit on or about June 30, 2011

after purchasing their own property. The tenant testifies that after they had purchased their new home the landlord informed the tenant that he would be moving into the basement suite after they had moved out. The landlord also told the tenant that he would rent the upstairs suite as the deal with the landlords purchasers had fallen through. The tenant argues that the landlord did not lose any rent as the landlord was going to occupy the basement suite. The tenant testifies that the landlord only placed an advertisement on Craig's List for the upper suite and not the basement suite.

The landlord argues that he told the tenant his purchasers had pulled out before the tenant gave the landlord an indication that they were moving out. The landlord testifies that he did not move into the basement suite.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent; I find the tenant relied on information given to her by the landlord that the new owners did not want tenants living in the rental unit. Based on this information the tenant purchased their own property and ended the tenancy without notice. As the tenant acted on information provided by the landlord I find the tenant is not responsible for the landlord's loss of rent for July, 2011.

I further find that the landlord has testified that he advertised the basement suite for rent as soon as the tenant gave him verbal notice that the tenancy would end. The tenant contradicts the landlord's testimony and testifies that the landlord only advertised the upper suite as the landlord was going to live in the basement suite. When one party contradicts the testimony of the other party the burden of proof falls to the party making the claim which in this case is the landlord. The landlord would be required to provide corroborating evidence to support his claim that he did advertise the basement suite for rent and did not actually move into this suite himself.

A claimant must proof what steps they took to mitigate or minimize the loss pursuant to s. 7(2) of the Act. The landlord has provided no corroborating evidence to show how he mitigated his loss by advertising the basement suite for rent for July, 2011 and I find therefore that the landlord has failed e to meet the burden of proof in this matter.

The landlord application to recover a loss of rent for July, 2011 is therefore dismissed.

As the landlord has been unsuccessful with his claim the landlord must bear the cost of filing his own application.

### Conclusion

The landlord application is dismissed in its entirety without leave to reapply.

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 08, 2012.

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Residential Tenancy Branch