



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Monetary Orders totalling \$3350 as follows:

1. A Monetary Order for unpaid rent / loss of revenue - Section 67;
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided the tracking number for the registered mail, purported not have been claimed.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

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

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed testimony and evidence in this matter is as following. The tenancy began on November 01, 2011 as a fixed term tenancy agreement with an effective end date of October 31, 2012 - and has since ended. Rent in the amount of \$1750 was

payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$875.00 and the landlord testified the parties conducted a mutual condition inspection of the rental unit. I do not have benefit of the requisite inspection report. The landlord claims the tenant provided verbal notice in the latter part of January they were vacating by the end of February 2012, which was followed by an e-mail to the same effect. The landlord testified the tenant vacated within the first few days of February 2012 and did not pay rent for February 2012. The landlord testified that they were able to re-rent the rental unit at the end of February for March 01, 2012 onward, but that they could only do so for \$1550 per month. The landlord seeks the unpaid rent for February, 2012 and the difference between the fixed term tenancy agreement and the new tenancy agreement for the balance of the fixed term (8 months x \$200 = \$1600).

The landlord also testified that at the end of the tenancy they canvassed the tenant whom elected not to conduct an end of tenancy inspection. The landlord did not elect to conduct an inspection on their own, but claims the tenant left the rental unit unclean, requiring more than 25 hours of cleaning by each landlord. The hearing did not have benefit of any supporting evidence from the landlord respecting the condition of the rental unit at the end of the tenancy. The landlord sought to retain the security deposit in addition to the monetary claim for loss.

### **Analysis**

Based on the landlord's testimony and on preponderance of the evidence, I find that the tenant vacated the rental unit without providing legal notice to end the tenancy in accordance with Section 45 of the Act, and did not pay the rent for February 2012. I find that the tenant's advice to the landlord in late January 2012 did not provide the landlord with sufficient time to mitigate their loss of rent revenue for the month of February 2012. Therefore, I find the landlord is owed the rent for February 2012 in the amount payable under the contractual tenancy agreement - **\$1750.00**.

I further find that the landlord and the tenant entered into a fixed term contractual tenancy agreement and that the tenant ended the tenancy earlier than the effective end date of the fixed term and that the landlord re-rented the rental unit accepting a lesser amount so as to mitigate further losses of revenue for the remainder of the fixed term. The landlord entered into a new contractual tenancy agreement for March 01, 2012 with a monthly rent payable of \$1550.00. As a result, I find the tenant is responsible for the difference in the rent payable for the balance of the fixed term agreement in the amount of \$200 per month from March 01, 2012 to the end of the fixed term date of October 31, 2012 in the sum of **\$1600.00**.

The landlord claims the tenant left the unit in an unclean state but has not provided any evidence for this claim or any supporting evidence that they complied with Section 35 of the Act in respect to a condition inspection and the requisite report. Section 36 of the Act states that if the landlord does not meet certain requirements as prescribed the landlord's right to claim against the security deposit is extinguished. Therefore, I **dismiss** the landlord's claim to retain the security deposit. However, the deposit will be off-set from any award made herein.

The landlord is entitled to recover the filing fee in the amount of **\$50.00**.

#### ***Calculation for Monetary Order***

Rent for February 2012	\$1750.00
Filing Fees for the cost of this application	\$50.00
Less Security Deposit and applicable interest <i>to date</i>	-\$875.00
<b>Total Monetary Award</b>	<b>\$2525.00</b>

#### **Conclusion**

I **Order** that the landlord retain the security deposit of \$875.00 in partial satisfaction of the claim and I grant the landlord an **Order** under Section 67 of the Act for the balance due of **\$2525.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on the parties.

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: April 30, 2012

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Residential Tenancy Branch