



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67; AND
3. An Order to retain the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

During the Hearing, the Landlord objected to an evidence package submitted by the Tenant as the Landlord states that this package was not received by her. The Tenant stated that the package was sent to the Landlord by registered mail and provided the postal tracking number for verification. Given the evidence of the Tenant, I find that the Tenant properly served the evidence on the Landlord and I accept the evidence of the Tenant.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on October 1, 2011 with a fixed end date of October 1, 2012. The Tenant moved out of the unit on January 28, 2012 but paid rent for February 2012. Rent in the amount of \$750.00 was payable monthly and the Landlord currently holds

\$375.00 as a security deposit. The Tenant also provided a cheque for March 2012 rent however it was subsequently stopped by the Tenant.

The Landlord states that no written notice was provided by the Tenant in relation to the end of the tenancy but that the Tenant verbally and by email informed the Landlord that the Tenant would move out by January 28, 2012. The Tenant states that she provided a letter dated January 10, 2012 to the Landlord informing the Landlord that the tenancy would end March 31, 2012. The Tenant states that upon be notified by the Landlord that a new renter was found for March 2012, the Tenant placed a stop payment on the March 2012 rent cheque.

The Landlord states that advertising for the unit started on December 12, 2011 when a notice was placed in the window of the house containing the unit. The Landlord states that an advertisement was placed in Craigslist on January 23, 2012 with a rental rate of \$750.00. The Landlord states that as a result of the advertising and by February 14, 2012 a tenant was found for March 1, 2012 however this tenant backed out on February 16, 2012 and a second advertisement was placed on craigslist February 19, 2012 with a reduced rent of \$695.00. The Landlord informed the Tenant of losing the new tenant. The Landlord found a new tenancy for April 1, 2012 and claims unpaid rent for March 2012 of \$750.00 and the loss of \$55.00 for each month thereafter to the end of the fixed term. The Landlord also claims recovery of a \$50.00 fee for the returned March 2012 cheque.

The Tenant states that she searched for ads for the rental of the unit throughout January and did not find such an advertisement until February 19, 2012. The Tenant argues that the Landlord is not entitled to March 2012 rent as a tenant had been found for this month. The Tenant argues that the Landlord is not entitled to collect the difference in rent for the period April to September 2012 (inclusive) as the Landlord failed to advertise the unit in a timely manner.

Analysis

Section 45 of the Act provides as follows in relation to a tenant ending a fixed term tenancy:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on undisputed evidence of the tenancy ending on January 28, 2012, I find that the Tenant failed to give the required notice to end the tenancy.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that measures have been taken to mitigate losses.

Given the above finding of the Tenant's breach, and considering the evidence of the Landlord in relation to advertising and obtaining a new tenant for April 1, 2012, I find on a balance of probabilities that the Landlord has suffered a loss of rental income due to the actions of the Tenant and has taken reasonable measures to mitigate the loss. I also find that the Landlord has established the costs for the loss and is therefore entitled to a monetary amount of **\$750.00** plus **\$330.00** (\$55.00 x 6 months).

Section 7 of the Regulation provides that a landlord may charge a fee of no more than \$25.00 for a returned cheque. Given the evidence of the Tenant that the cheque was

stopped by the Tenant, I find that the Landlord has substantiated a monetary entitlement to **\$25.00**.

The total entitlement of the Landlord is **\$1,105.00**. Setting the security deposit plus interest of **\$375.00** off this amount leaves **\$730.00** owed by the Tenant to the Landlord.

Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$375.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$730.00**. If necessary, this order may be filed in the Small Claims Court and 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: April 26, 2012.

---

Residential Tenancy Branch