



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 22, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit as partial payment of the unpaid?

### Background and Evidence

This tenancy started on December 1, 2010 as a month to month tenancy. Rent was \$600.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$300.00 to the previous landlord and when the Landlord purchased the rent unit on October 21, 2011 the security deposit was rolled over to this Landlord. The Landlord said the Tenant moved out of the rental unit on November 2, 2012.

The Landlord continued to say the Tenant only paid \$100.00 of the rent for November, 2012 as the Tenant said she was moving out of the unit by November 5, 2012. The Tenant actually moved out of the unit on November 2, 2012. The Landlord said because the Tenant did not give him 1 month of notice to end the tenancy the Tenant should be responsible to pay the balance of the November rent of \$500.00. The Landlord also said the Tenant left items in the unit including a sofa, a chair and a number of things on the balcony which he had to dispose of. The Landlord also said the Tenant did not clean the carpets in the unit when she left. The Landlord continued to say that he understood he is not applying for any damages, but just the unpaid rent for November, 2012 of \$500.00 and the filing fee of \$50.00.

The Tenant said when she told the Landlord she was moving out on October 28, 2012 the Landlord agreed to write an agreement to end the tenancy which he did and he signed it on October 28, 2012. The agreement to end the tenancy says that the Landlord agrees to let the Tenant pay 5 days rent for November, 2012 as the Tenant is moving out of the unit due to a breach of the contract. Both the Tenant and the Landlord agreed to this document and a copy of the agreement was provided into evidence by the Tenant. As a result the Tenant said she is not responsible for the balance of the November, 2012 rent of \$500.00 because they agreement to end the tenancy by November 5, 2012 and she paid the Landlord \$100.00 for rent up to November 5, 2012, which the Landlord agreed to.

### Analysis

Section 44 (c) of the Act says a tenancy may end if the landlord and tenant agree in writing to end the tenancy.

The parties agree that they wrote an agreement to end the tenancy on October 28, 2012. As well, both parties verbally agreed to end the tenancy on November 5, 2012 and that the Tenant was responsible to pay \$100.00 rent for the 5 days in November. Consequently I find the parties had a Mutual Agreement to End the Tenancy as of November 5, 2012 and therefore the Landlord's claim for unpaid rent for the full month of November, 2012 is dismissed without leave to reapply.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of the filing fee of \$50.00, which he has already paid.

### Conclusion

The Landlord's application for unpaid rent in the amount of \$500.00 is dismissed 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*.

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Residential Tenancy Branch