



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: MNR, MNSD, MNDC, FF  
Tenant: MNSD

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

### Issue(s) to be Decided

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

It must also be decided if the tenants are entitled to a monetary order for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on January 16, 2012 for a month to month tenancy beginning on February 1, 2012 for a monthly rent of \$950.00 due on the 1<sup>st</sup> of each month with a security deposit of \$475.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 2, 2012 with an effective vacancy date of February 16, 2012 citing the failure of the tenants to pay rent in the amount of \$950.00 that was due on February 1, 2012;
- A copy of a signed Proof of Service document stating the landlord served the tenants with the 10 Day Notice on February 2, 2012 at 10:00 p.m. and that this service was witnessed by a third party; and
- A copy of a handwritten note from the tenants to the landlord dated February 20, 2012 requesting their security deposit back "as we have not moved into your apartment" and providing the landlord with the tenant's forwarding address.

The tenants also provided copies of the tenancy agreement and their handwritten note dated February 20, 2012.

The parties agreed that despite entering into a tenancy agreement on January 16, 2012 the tenants identified to the landlord on or about January 20, 2012 that they would not be able to move in to the rental unit for February.

The parties also agree that through various discussions the tenants still intended to move into the rental unit at a later date. The tenants submitted that they intended to move into the unit on or about February 20, 2012 for a prorated amount. The landlord's agent testified that at one point the landlord had agreed to forgo rent for February 2012 and have the unit available for the tenants should they want to move by March 1, 2012.

The landlord's agent testified the rental unit was rented to new tenants effect April 1, 2012.

### Analysis

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into whether or not the tenant ever occupies the rental unit. As there was a tenancy agreement signed by the parties on January 16, 2012 I find, in accordance with Section 16 that the parties to the tenancy agreement were then bound to their rights and obligations under the *Act*.

Section 26 of the *Act* requires a tenant to pay the rent when it is due under the tenancy agreement until such time as the tenancy ends and Section 45 stipulates a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

As such, the earliest the tenants could have ended the tenancy would have been February 29, 2012 based on the requirement for the tenants to serve the landlord with written notice of their intent to end the tenancy on that date provided the landlord received the tenants' written notice no later than January 31, 2012. As the tenants provided no written notice to the landlord of their intent to end the tenancy I find the tenants are responsible for the payment of rent for the month of February 2012.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

From the testimony of both parties I accept the tenants failed to pay rent for the month of February 2012. As a result, I find the landlord has suffered a loss and that the loss results from the tenants' violation of the tenancy agreement and despite any agreements the landlord offered to the tenants as the tenants failed to fulfil their obligations of these additional agreements, the tenancy again violated the tenancy agreement. I accept the value of that loss to be that of the value of the rent as per the tenancy agreement.

From the testimony of both parties I find the landlord had offered over and above their obligations to hold the rental unit and forgo rent if the tenants still were going to move in to the rental unit towards the end of February 2012, but since the tenants informed the landlord on or about February 20, 2012 that they would not be moving in, I find the landlord has taken all reasonable steps to mitigate this loss as soon as they knew the tenants were not going to move in the rental unit.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,000.00** comprised of \$950.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$475.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$525.00**.

This order must be served on the tenants. If the tenants fail 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.

As I found the landlord may retain the security deposit as partial satisfaction of the amount owed by the tenants, I find the tenants are therefore not entitled to the return of the security deposit and I dismiss their Application in its entirety.

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: May 02, 2012.

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Residential Tenancy Branch