



# 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 Landlords for a Monetary Order for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on March 9, 2012. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties 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 Tenants' security deposit?

### Background and Evidence

This tenancy started on December 1, 2010 as a fixed term tenancy with an expiry date of December 1, 2011 and then the tenancy renewed on a month to month basis. Rent was \$1,200.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$600.00 on October 19, 2010. The Landlord said the Tenants moved out of the rental unit on December 31, 2011.

The Landlord said that the Tenants did not give written or verbal notice to end the tenancy prior to moving out on December 31, 2011. The Landlord continued to say he did not receive the keys for the unit from the Tenant until January 18, 2012. As a result the Landlords said the Tenants had access to the unit up to January 18, 2012 so they believe the Tenants are responsible for their loss of rental income for January, 2012 in the amount of \$1,200.00 and for February, 2012 in the amount of \$1,200.00. The Landlord continued to say that they did not do a move in condition inspection report or a move out condition inspection report, but they have applied to retain the security deposit as partial payment of unpaid rent. The Landlord continued to say they are withdrawing their claims for the bailiff costs.

The Tenant said they sent the Landlord a letter dated November 21, 2011, which was their formal written notice that they were ending the tenancy on December 31, 2011. The Tenant provided a Canada Post receipt dated November 22, 2011 and a copy of the letter to prove that they sent the letter to the Landlord. The Tenant said they followed the Residential Tenancy Branch rules to end the tenancy as stated in the Act. The Landlord said they did not receive the letter because he had changed his address 8 months prior to December, 2011. The Landlord continued to say he did not inform the Tenants of his change of address and that is why he did not receive the letter from the Tenants ending the tenancy. The Tenant said they were unaware of the Landlord's change of address and they sent the letter to the address the Landlord gave to them on the tenancy agreement. The Tenant said it is not her fault the Landlord did not receive the letter as she acted responsibly and correctly by informing the Landlord they were ending the tenancy by the method of service required by the Residential Tenancy Act.

The Landlord said when the Tenant received the returned letter on December 7, 2011 she should have contacted him and explained what had happened. The Landlord said their first knowledge of the letter was with the Tenants' evidence package for this hearing. The Landlord said it was their mistake by not informing the Tenants of their address change, but there were numerous emails between them so the Tenant had ample opportunity to tell them about the letter and that they were moving out of the rental unit on December 31, 2011. The Tenant said the relationship with Landlord had soured by December 7, 2011 so she did not want to talk to him after that date. The Tenant said she received the letter back on December 7, 2011.

The Tenant said she did make a settlement proposal to the Landlords that the Landlords could keep her security deposit of \$600.00 as full settlement of the rent up to January 18, 2012, which was when she returned the keys to the rental unit. The Tenant said the Landlords' declined her settlement offer.

### Analysis

Section 13 (2) (e) of the Act says a Landlord is required to and must provide the address and telephone number of the landlord or the landlord's agent to the tenant.

This is done precisely so that the tenant can serve the landlord with documents or contact the landlord as a result of issues with the tenancy. If the landlord changes the landlord's contact information he is required to change the tenancy agreement in writing or provided a written document informing the tenant of the changes. In this situation the Landlord agrees that he did not provide the Tenants with his change of address nor did he amend the tenancy agreement. Consequently, this dispute is a direct result of the Landlord not meeting his responsibilities as a Landlord. I have taken note of the Landlord's testimony that they believe the Tenants should have in good conscience informed the Landlord when the letter ending the tenancy was returned. This does make common sense, but the Tenant said this would have put them in a difficult position because the notice to end tenancy may then have been taken as being given December

7, 2011 and this would mean the notice to end the tenancy would be effective for January 30, 2012 (one month later). Given the circumstances and that communications had broken down between the parties, I find the Tenants complied with the Act and I accept the Tenants' letter to end the tenancy dated November 22, 2011. The Landlords had the responsibility to update their contact information and they did not; therefore I find the Landlord have not met their obligations under the Act and as a result the Landlords have not established grounds to claim for lost rental income for January and February, 2012.

Further as the Landlord said he knew the tenancy ended December 31, 2011, it was the Landlord's responsibility to contact the Tenants for a move out condition inspection report which is normally the time the keys to a rental unit are returned. As the Landlord did not schedule a move out condition inspection report with the Tenants I dismiss the Landlords claim that the Tenants had possession of the unit until January 18, 2012.

The Landlords' application is dismissed without leave to reapply.

As the Landlords have not been successful in this matter, they are ordered to bear the cost of the filing fee of \$50.00 which they have already paid and I order the Landlords to handle the Tenants security deposit as outlined in the Act.

### Conclusion

The Landlords application 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