



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant   MNSD, FF  
                                 Landlord   MNR, MNSD, FF, O

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for compensation for unpaid rent or utilities, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on April 26, 2012, in accordance with section 89 of the Act.

The hearing started at 9:00 a.m. as scheduled, however the Tenants did not dialled into the conference call. In the absence of any evidence from the Tenants to support their application, the Tenants' application is dismissed without leave to reapply.

### Issues to be Decided

Landlord:

1. Is there unpaid rent or utilities and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenants' deposits?

### Background and Evidence

This tenancy was to start on March 1, 2012 as a month to month basis. Rent was to be \$835.00 per month payable in advance of the 1<sup>st</sup> day of each month. The female Tenant signed the Tenancy agreement on February 24, 2012 and paid a security deposit of \$395.00 on February 24, 2012. The Landlord said on February 26, 2012 the Tenants told the Landlords they were not moving in and the Tenants requested their security deposit back.

The Landlords continued to say they had asked the female Tenant if she should wait to sign the tenancy agreement so that the other Tenant could view the unit, but the Landlord said the female Tenant said that would not be necessary and she signed the tenancy agreement and paid a portion of the security deposit to confirm the tenancy. The Landlord said the Tenants changed their minds about moving in and then asked for their security deposit back. The Landlord said they told the Tenants they were responsible for the March, 2012 rent if they could not find a new tenant for the unit. The Landlord said they did find a new tenant that moved into the unit on March 15, 2012.

The Landlord said they are seeking the lost rent for March and the filing fee of \$50.00 for this application.

## Analysis

Section 16 of the Act says the rights and obligations of a landlord and a 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.

The female Tenant entered into a tenancy agreement on February 24, 2012 and confirmed that tenancy agreement by paying a portion of the security deposit of \$395.00 on February 24, 2012. I find a tenancy was established with the female Tenant and the female Tenant is responsible for the March, 2012 rent of \$835.00.

Section 38 (3) (b) of the Act says a Landlord may retain from a security deposit or pet deposit an amount that at the end of the tenancy remains unpaid. Consequently as the Tenant did not pay the March, 2012 rent and the female Tenant was responsible for the March, 2012 rent, I find the Landlords' have established ground to retain the Tenant's security deposit of \$395.00 for unpaid rent. I order the Landlord to retain the Tenant's security deposit of \$395.00 for unpaid rent.

Section 7 of the Act says that a landlord or tenant who claims damage or a loss must do what is reasonable to minimize the damage or loss. In this case the Landlord rented the unit to new tenants on March 15, 2012 to minimize their loss of rent. Consequently I find the Landlords' claim is adjusted from the full March 2012, rent of \$835.00 to ½ a month's rent of \$417.50 for March, 2012. Further, as the Landlords are retaining the

security deposit in the amount of \$395.00 for unpaid rent, I have issued a monetary order for the balance of the March, 2012 rent due, in the amount of \$22.50 and for the filing fee of \$50.00 for this proceeding as the Landlords were successful in their application. The Landlords will receive a monetary order for \$72.50 which must be served on the Tenant in one of the ways approved by the Act.

## Conclusion

The Tenants' application is dismissed without leave to reapply.

The Landlords are ordered to retain the Tenant's security deposit in the amount of \$395.00 and a monetary order in the amount of \$72.50 has been issued to the Landlords.

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