



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR O

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities.

The landlords and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant attended the hearing, I find the tenant was served in accordance with the *Act*.

### Preliminary Matter

The landlords clarified at the start of the hearing that the monetary amount claimed of \$1,175.00 included a \$425.00 security deposit, which the parties agreed was surrendered by the tenant for the purposes of applying the deposit towards unpaid rent. As a result, the actual monetary claim is \$1,600.00, less the security deposit of \$425.00.

### Issue to be Decided

- Should the landlord be granted a monetary order for unpaid rent or utilities?

### Background and Evidence

The landlords affirmed that the tenancy began on August 1, 2010. Rent was due on the first day of each month in the amount of \$850.00. The tenant paid \$425.00 as a security deposit on August 23, 2010.

The tenant testified that on November 6, 2011, he provided verbal notice to the landlords advising that he would be vacating the rental unit on December 1, 2011. The tenant stated that the landlords agreed and accepted his verbal notice. The landlords

disputed the tenant's testimony by stating that no agreement had been made and the tenant did not provide written notice. Both parties agree that the tenant did not vacate the rental unit until December 2, 2011.

Both parties agreed that prior to November 2011, \$950.00 remained owing for unpaid rent. On November 20, 2011, both parties agree that the tenant paid \$200.00 towards the unpaid rent, which reduced the amount of rent owing to \$750.00. The tenant stated that he permitted the landlords to use the \$425.00 security deposit towards the unpaid rent for a balance owing of \$325.00 in unpaid rent.

The landlord stated that as of December 1, 2011, the tenant owed another month's rent in the amount of \$850.00. The landlords' claim of \$1,175.00 consists of \$1,600.00 in unpaid rent as stated above, less the security deposit of \$425.00. The landlords clarified that utilities are not part of their monetary claim and as a result, have not been considered in this Decision.

The tenant provided copies of correspondence and utility bills as evidence for this proceeding. All relevant evidence has been considered in this Decision.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Claim for unpaid rent**– The landlords testified that \$1,175.00 remains owing for unpaid rent after applying the security deposit. The tenant stated that he provided verbal notice in November, 2011 that he would be vacating the rental unit on December 1, 2011, and that the landlords agreed to that arrangement. The landlords disputed the tenant's testimony stating that no such agreement was made and that the tenant owed \$325.00 in unpaid rent after releasing the security deposit to them, and \$850.00 for unpaid rent for December 2011.

Section 45 of the *Act*, states:

#### **Tenant's notice**

**45** (1) A tenant may end a periodic 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, and**

**(b) 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.**

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the *Act* states:

### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Based on the tenant's testimony, I find the tenant failed to comply with section 45 of the *Act*. The tenant did not provide written notice to the landlords that is not earlier than one month after the landlord receives the notice and is the day before day in the month that rent is payable. The tenant would have had to provide written notice to the landlords on or before October 31, 2011, and have vacated the rental unit by November 30, 2011 to avoid having to pay rent for December 2011.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$1,600.00** consisting of \$750.00 in unpaid rent before November 2011, and \$850.00 in unpaid rent for December 2011. The landlord is holding a security deposit of \$425.00, which was paid by the tenant on August 23, 2010, and has accrued no interest since that date.

**Monetary Order** – I find that the landlords are entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Unpaid rent prior to November 2011	\$750.00
Unpaid rent for December 2011	\$850.00
<b>Subtotal</b>	<b>\$1,600.00</b>
Less security deposit	(\$425.00)
<b>TOTAL</b>	<b>\$1,175.00</b>

### Conclusion

I find that the landlords have established a total monetary claim of **\$1,600.00** as indicated above. I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1,175.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 10, 2012

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Residential Tenancy Branch