



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD MNDC FF

### Preliminary Issues

At the outset of the hearing the Tenant confirmed receipt of the hearing documents and noted that she was informed that the evidence was received at her parents' home however she has not seen the evidence as her parents are currently on vacation. I asked the Tenant how she wished to proceed without having seen the evidence and she advised she wished to proceed with the hearing as scheduled as she has seen the e-mails and tenancy agreement before.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Are the Landlords entitled to a Monetary Order?

### Background and Evidence

The following facts are not in dispute:

- On May 9, 2012 the Tenant signed a tenancy agreement for a month to month tenancy that was to begin on May 31, 2012; and

- The tenancy agreement stipulated that rent was payable on the first of each month in the amount of \$720.00; and
- On May 9, 2012 the Tenant paid \$360.00 as the security deposit; and
- On May 31, 2012 at approximately 12:00 noon the Tenant informed the Landlord that she had been laid off from her employment so she would not be moving into the rental unit.

The Landlord pointed to her evidence which included, among other things, copies of: this Tenant's tenancy agreement; the tenancy agreement for the tenant who rented the unit effective June 28, 2012 and who paid \$48.00 for two days rent in June 2012; a chronological list of events; proof of advertising the rental unit as of May 31, 2012.

The Tenant acknowledged that she cancelled her tenancy on May 31, 2012 and did not occupy the rental unit as originally agreed.

The Landlord is seeking loss of rent for June 2012, in the amount of \$672.00 (\$720.00 – 48.00), registered mail costs of \$9.24, the filing fee of \$50.00, and wishes to retain the security deposit of \$360.00 as partial satisfaction of her claim.

### Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 (1) of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy 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.

In this case the parties agreed they entered into a month to month tenancy agreement that was to be effective May 31, 2012; however, the Tenant cancelled the tenancy agreement on May 31, 2012 without notice; which is a breach of section 45 (1) of the Act.

The aforementioned breach has caused the Landlords to suffer a partial loss of June 2012 rent as the Landlords were not able to re-rent the unit until June 28, 2012, despite

their immediate efforts to do so. Therefore, I find the Landlords have met the burden of proof, as noted above, and I award the Landlords **\$672.00** in loss of rent for June 2012.

In regards to registered mail fees of \$9.24 claimed for bringing this application forward, I find that the Landlords have chosen to incur these costs which cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to a service method choice are not a breach of the Act. Therefore, I find that the Landlords may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. Accordingly, I dismiss the Landlord's request.

The Landlords have primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

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

Loss of Rent for June 2012 (\$720.00 – 48.00)	\$ 672.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$ 722.00
<b>LESS:</b> Security Deposit \$360.00 + Interest 0.00	<u>-360.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$362.00</u></b>

### Conclusion

The Landlord has been issued a Monetary Order in the amount of **\$362.00**. This Order is legally binding and must be served upon the Tenant.

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: August 08, 2012.

---

Residential Tenancy Branch