



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that on June 20, 2012 the tenant handed the landlord's representative a notice to end this tenancy by July 31, 2012. The landlord entered into written evidence a copy of that notice. The landlord testified that she sent a copy of the landlord's original dispute resolution hearing package seeking a monetary award of \$964.00 by registered mail on July 9, 2012. The landlord testified that she sent the tenant a copy of an amended dispute resolution hearing package in which the landlord was seeking an increased monetary award of \$1,287.16 by registered mail on September 7, 2012. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the hearing, the landlord requested a decreased monetary award as she was successful in re-renting the rental unit as of July 15, 2012. This decreased the amount of rental loss experienced by the landlord for July 2012 to \$482.00, rather than \$964.00. The revised amount of the landlord's requested monetary award was reduced from \$1,287.16 to \$805.16.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy commenced on April 1, 2012. Monthly rent for this tenancy which ended when the tenant vacated the premises on June 20, 2012 was set at \$964.00, payable in advance on the last day of each month. The landlord testified that the landlord continues to hold the tenant's \$482.00 security deposit paid on March 30, 2012.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of April 2, 2012 and the joint move-out condition inspection report of June 20, 2012. The landlord confirmed that the tenant signed authorization in the joint move-out condition inspection report to allow the landlord to retain \$323.16 from the tenant's security deposit. This amount was to cover carpet cleaning, general cleaning and the cleaning of the drapes at the end of this tenancy.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for July 2012, the tenant would have needed to provide his written notice to end this tenancy before May 31, 2012.

Based on the undisputed oral and written evidence submitted by the landlord, I am satisfied that the tenant ended this tenancy in short order on June 20, 2012, and without giving the landlord adequate notice required under the *Act*. There is undisputed evidence that the tenant did not pay any rent for July 2012, and was responsible for the landlord's loss of rent for that month. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for July 2012. In fact, the landlord was successful in locating a new tenant who took possession of the rental unit by July 15, 2012, and provided the landlord with one-half month's rent (i.e., \$482.00) for July 2012. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss. Consequently, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and as a result the landlord is entitled to a monetary award of \$482.00, the amount of the monetary loss for unpaid rent the landlord suffered for July 2012.

Section 38(4)(a) of the *Act* allows a landlord to retain an amount from a security deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.” As the landlord has submitted undisputed written evidence that the tenant provided written authorization to let the landlord keep \$323.16 as a result of damage that had occurred during this tenancy, I allow the landlord to keep \$323.16 from the tenant’s security deposit. I allow the landlord to keep the remaining \$158.84 from the tenant’s security deposit in partial satisfaction of the remainder of the monetary award for unpaid rent for July 2012. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the filing fee for this application from the tenant.

### Conclusion

I issue a monetary Order in the landlord’s favour under the following terms which allows the landlord to recover unpaid rent, the filing fee for this application and a portion of the tenant’s security deposit in accordance with section 38(4)(a) of the *Act* and to retain the remainder of the tenant’s security deposit:

Item	Amount
Unpaid Rent for ½ of July 2012	\$482.00
Tenant’s Written Authorization to Retain a Portion of Security Deposit in Accordance with s. 38(4)(a) of the <i>Act</i>	323.16
Less Security Deposit	-482.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$373.16</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: September 17, 2012

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Residential Tenancy Branch