

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF, O

### Introduction

This is an application filed by the Landlord for a monetary order for unpaid rent, money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have acknowledged receiving the notice of hearing and evidence packages submitted by the other party, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

### Background and Evidence

Both parties agree that a 1 year fixed term tenancy agreement beginning June 1, 2012 and to end on June 1, 2013 was signed as shown by the submitted copy in evidence from the Landlord. The monthly rent was \$1,200.00 payable bi-weekly of \$600.00 and a \$600.00 security deposit was paid. Both parties also agreed that the Tenant moved in June 19, 2012 and gave verbal notice on the same date to not move in. Both parties agreed that the Tenant gave to the Landlord a notice to vacate the rental unit in writing dated June 23, 2012 and received it a few days later. Both parties also agreed that the Tenant paid to the Landlord a total of \$2,100.00 of which \$300.00 was paid to hold the rental unit for the Tenants.

The Landlord seeks a monetary order for \$1,200.00 for compensation for lack of notice for July 2012 rent of \$1,200.00.

The Tenants claim that the rental unit was not in an accepted condition for the move-in and gave verbal notice on the same date of June 19, 2012. Neither party submitted a copy of a condition inspection report for the move-in or the move-out. The Landlord claims that reports for both were completed, but not submitted into evidence. Both parties agreed that the Tenants mother in law viewed the rental on their behalf and then

the Tenants entered into a signed fixed term tenancy without viewing the rental. The Landlord states that the Tenant's did not give him an opportunity to address their issues and did not move into the rental unit.

The Tenant disputes this stating that the Landlord had new Tenants move into the rental unit for July and is not entitled to compensation for July. The Landlord disputes this stating that his new Tenants did not move into the rental until August and has not received any rent for July.

### Analysis

Section 45 of the Residential Tenancy 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]*.

As both parties are in agreement that the Tenant gave notice in writing within a few days of receiving the dated notice of June 23, 2012, I find that the Tenants failed to provide proper notice to end the tenancy. The Landlord has established a claim for compensation of \$1,200.00 for lack of notice.

I find that the Tenants failed to give the Landlord an opportunity to address their issues once notified pursuant to section 32 of the Residential Tenancy Act. The Tenants chose to vacate the rental unit.

As for the Tenant's claim that new Tenants moved into the rental unit in July, the onus or burden of proof is on the party making the claim, in this case the Tenant has made the claim that new Tenants occupied the rental unit in July. The Landlord has disputed this. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find on a balance of probabilities that the Tenant's claim of new Tenant's occupying the rental unit in July has failed.

Section 20 of the Residential Tenancy Act states,

**Landlord prohibitions respecting deposits**

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement, or
  - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

(d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

The Landlord must return the \$300.00 payment for holding the rental unit for the Tenants. Both parties agreed as noted above in evidence that the Landlord currently holds the \$600.00 security deposit and a \$300.00 payment to hold the property. I order that the Landlord may retain this \$900.00 in partial satisfaction of the \$1,200.00 claim established. I find that the Landlord is entitled to recovery of the \$50.00 filing fee. The Landlord is granted a monetary order for the balance due of \$350.00.

### Conclusion

The Landlord is granted a monetary order for \$350.00.  
The Landlord may retain the \$600.00 security deposit and the \$300.00 overpayment of rent.

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 24, 2012.

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Residential Tenancy Branch