



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on October 10, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied on October 26, 2012 for:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

At the onset of the Hearing the Parties confirmed that the tenancy has ended and the Tenant is no longer in the unit. As a result, I dismiss the Tenant’s application. The Landlord also confirmed that the Landlord is not claiming unpaid utilities.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy began on March 2, 2012 and ended on October 24, 2012. The Parties conducted a move-in inspection. Rent of \$525.00 was payable monthly and at the outset of the tenancy the Landlord collected a security deposit of \$262.50. On October 20, 2012, a Ministry representative offered the Landlord \$375.00 towards the rent owing for October 2012 however the Landlord refused to accept this rent.

The Landlord states that a move-out condition inspection was not done as the move-out was hostile and the Landlord has a restraining order against the Tenant. The Landlord states that the unit was left undamaged but some time was spent cleaning the unit. The Landlord states that she only claims the amount of the security deposit as rent owing. The Landlord states that she refused the rent only due to the intervening application for an early end to tenancy which was successful two days later. The Tenant argues that by failing to take the rent when offered the Landlord failed to mitigate her losses and she is therefore not entitled to any rent.

### Analysis

Based on the undisputed evidence of the Parties that rent for October 2012 was unpaid, I find that the Landlord has substantiated an entitlement to the amount claimed by the Landlord of **\$262.50**. Although the Landlord did not accept the rent when offered, I find that this does not relieve the Tenant of his obligation to pay rental arrears. I note however that had the Landlord accepted the rent, this application would likely not have been necessary and for this reason I decline to award recovery of the filing fee.

Setting the security deposit of \$262.50 off the entitlement leaves nothing owing to the Landlord.

### Conclusion

The Tenant's application is dismissed.

**I order** that the Landlord retain \$262.50 from the **deposit** and interest of \$262.50 in full satisfaction of the claim

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: November 14, 2012.

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Residential Tenancy Branch