



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The landlord applied to recover unpaid rent for July 2012 and authorization to retain the security deposit and pet deposit. The tenants applied to recover rent for July 2012 and return of their security deposit and pet deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent for July 2012?
2. Should the security deposit and pet deposit be returned to the tenants or retained by the landlord?

### Background and Evidence

The parties signed a tenancy agreement for a month to month tenancy set to commence April 13, 2012. The tenants paid a \$675.00 security deposit and a \$675.00 pet deposit. The tenants were required to pay rent of \$1,350.00 on the 1<sup>st</sup> day of every month pursuant to the tenancy agreement.

On June 9, 2012 the landlord served the tenants with a *2 Month Notice to End Tenancy for Landlord's Use of Property* with a stated effective date of August 30, 2012. The reason for ending the tenancy, as stated on the 2 Month Notice, was that:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit*

The tenants did not file to dispute the Notice. The tenants did not pay rent on July 1, 2012 or at any time for the month of July 2012. On July 23, 2012 the landlord filed an

Application for Dispute Resolution requesting an Order of Possession based upon the 2 Month Notice. A hearing was held during which time the tenants did not appear and an Order of Possession was granted on August 17, 2012. The tenants vacated the property August 31, 2012. The tenants provided a forwarding address to the landlord, in writing, on September 7, 2012.

***Landlord's application***

The landlord is seeking to recover unpaid rent for the month of July 2012 in the amount of \$1,350.00 and requests authorization to retain the deposits in satisfaction or partial satisfaction of the rent owed.

The tenants submitted that the when the landlord gave them the 2 Month Notice the landlord indicated that he felt bad because he was giving them a Notice to End Tenancy so soon after their tenancy began. The landlord also told them that they did not have to pay rent for two months: July and August 2012.

The landlord denied telling the tenants they did not have to pay rent for two months. In support of this position the landlord submitted that there is no written agreement to that effect and that under the Act the tenants were only entitled to one month of rent as compensation.

The tenants submitted that although the tenants thought it best to ask the landlord to put the agreement in writing they did not. Rather, the landlord seemed sincere in saying he felt bad about giving them a Notice to End Tenancy and trusted his word that he was giving them two months of rent as compensation. The two free months of rent was a factor in deciding to accept the 2 Month Notice and not dispute it. The tenants planned on moving out at the end of August 2012 which is why they did not appear at the hearing on August 17, 2012.

I asked whether any action was taken when rent for July 2012 was not paid. The landlord stated that he phoned the tenants and talked to the male tenant. The landlord submitted that the male tenant told the landlord that they were to receive 2 months of free rent. The landlord claimed that he did not respond to such a statement and decided to pursue it later so as to not jeopardize the tenants moving out by the end of August 2012 which would severely impact the transfer of the property.

The tenant denied that the landlord phoned them asking about rent for July 2012 rent. Rather, the tenants took the position that had the landlord required them to pay rent for

July 2012 they would have paid it. By not paying rent for July 2012 supports their position that the landlord had told them they did not have to pay it.

### ***Tenants' application***

The tenants clarified that in filing their application they included compensation equivalent to July 2012 rent to offset the landlord's claim to recover unpaid rent for this month. As the tenants did not pay rent for July 2012 I informed the parties that I would make no award to the tenants to recovery rent for the month of July 2012 rent and this requirement to pay rent for July 2012 would be dealt with under the landlord's Application.

The remainder of the tenant's application pertains to the return of their deposits. The tenants seek return of the deposits as they gave the landlord their forwarding address in writing and are of the position the landlord does not have claim against them.

### **Analysis**

Under section 51 of the Act, a tenant is entitled to compensation equivalent to one month of rent for receiving a 2 Month Notice to End Tenancy for Landlord's Use. It is undisputed that the rent for July 2012 and August 2012 was not paid and the tenants occupied the rental unit until the end of August 2012. A tenant's entitlement to one month of free rent is clearly communicated on the 2 Month Notice and is contained in various publications, in addition to the Act, available from the Residential Tenancy Branch.

Under the Act, the landlord would have been entitled to collect rent for July 2012 and the tenants would have been entitled to withhold rent for August 2012. However, based upon the parties' submissions I find the issue is whether the landlord waived this entitlement to collect rent for July 2012.

A waiver is the voluntary relinquishment or surrender of a right, entitlement, or privilege. While a waiver is often in writing, sometimes a person's actions can act as a waiver.

A waiver of July 2012 rent was not recorded in writing and the parties provided disputed verbal testimony as to what transpired when the landlord gave the 2 Month Notice and in early July 2012 when rent was not paid for July 2012. However, I find the landlords actions, or lack of action, indicative of a waiver. I make this finding based upon the following considerations:

1. The landlord did not serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when rent was not paid for July rent.
2. In filing an Application for Dispute Resolution on July 23, 2012 the landlord did not seek to recover unpaid rent for July 2012.
3. In filing this Application for Dispute Resolution the landlord states in the details of dispute: "I didn't know I should give them only 1 month free rent and then they ask for 2 month free rent."

Based upon the above, I find that, on the balance of probabilities, the landlord waived his right to collect July 2012 rent.

When one party waives their right or entitlement to collect from another party, the party cannot unilaterally withdraw the waiver, especially when the other party has taken action based upon that waiver.

Having found the landlord waived his entitlement to collect rent for July 2012 I dismiss the landlord's Application. As the landlord's claim against the security deposit and pet deposit has been dismissed I order the landlord to return the deposits to the tenants.

I note that in the decision issued August 17, 2012 the Arbitrator (formerly known as Dispute Resolution Officer) authorized the landlord to deduct \$50.00 from the security deposit. Accordingly, I find that \$625.00 is the balance remaining for the security deposit.

I further order the landlord to pay the tenants \$50.00 in recovery of the filing fee they paid for their Application for Dispute Resolution.

Based upon the forgoing, I order the landlord to return the sum of \$1,350.00 to the tenants and provide the tenants with a Monetary Order calculated as follows:

Security deposit, balance remaining	\$ 625.00
Pet deposit	675.00
Filing fee	<u>50.00</u>
Monetary Order	\$1,350.00

To enforce payment the tenants must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord's application has been dismissed. The tenants have been provided a Monetary Order in the amount of \$1,350.00 to serve upon the landlord and enforce as necessary.

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: December 14, 2012.

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Residential Tenancy Branch