



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?  
Are either party entitled to the security deposit?

### Background and Evidence

The parties agreed on September 5, 2012, the tenants paid the landlord a security deposit of \$437.50. The tenancy was to begin on October, 1, 2012. Rent in the amount of \$875.00 was payable on the first of each month.

The landlords testified the tenancy agreement was to commence on October 1, 2012. The landlords stated there was a discussion with the tenants about a possible earlier move-in date (September 29), however, that dates were not agreeable. Filed in evidence is a copy of the tenancy application.

The tenants testified that the landlord was going to allow them to move into the unit earlier without pay any additional rent and because the landlord failed to honor that agreement they decided not to move in to the rental unit. The tenants stated on October 7, 2012, they provided written notice to the landlord.

### Tenant's application

The tenants seek the return of the security deposit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the each party has the burden of proof to prove a violation of the Act by the other party and a corresponding loss.

### Landlords' application

On September 5, 2012, a security deposit was given to the landlord and the tenancy was to formally begin on October 1, 2012. Under section 16 of the Act, the right and obligation of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

*Rules about payment and non-payment of rent*

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenants did not take possession of the unit on October 1, 2012 and did not pay rent as required by section 26 of the Act. I find the tenants have breached section 26 of the Act when they failed to pay rent.

*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.*

On October 7, 2012, the tenants provided written notice that they would not be occupying the unit. Under section 45 of the Act the tenants were required to provided the landlord with at least one month notice to end the tenancy. I find that the tenants have breached section 45 of the Act as the earliest date they could have legally ended the tenancy was November 30, 2012.

In this case, the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the tenancy agreement. This includes compensating the landlords for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

The evidence of the landlords was they were unable to find a new tenant for October 2012, due to short notice, however, a new tenant was found for November 2012. I find the landlords took reasonable steps to mitigate the loss by having the unit rented for November 2012. Therefore, the landlords are entitled to recover unpaid rent for October 2012, in the amount of **\$875.00**.

I find that the landlords have established a total monetary claim of **\$925.00** comprised of the unpaid rent and the \$50.00 fee paid for this application.

I order that the landlords retain the deposit and interest of **\$437.50** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$487.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenants' application

As a result of the above finding, I find the tenants' application for return of the security deposit must be dismissed. The tenants are not entitled to recover the cost of filing the application from the landlord.

Conclusion

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and are granted an order for the balance due.

The tenants' application is dismissed.

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: January 02, 2013.

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Residential Tenancy Branch

