



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

The landlord's application is seeking orders as follows:

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

The tenant's application is seeking orders as follows:

- Return all or part of the security deposit; and
- 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.

### **Preliminary issue**

The landlord withdraws their claim for damages.

### **Background and Evidence**

The tenancy began on June 1, 2009. Rent in the amount of \$600.00 was payable on the first of each month. A security deposit of \$290.00 was paid by the tenants.

The parties agreed the tenancy was to end on October 15, 2012. The parties agreed the landlord was entitled to retain the security deposit for unpaid rent for October 1– 15, 2012. The parties agreed the tenants' vacated the unit and returned the keys on September 29, 2012.

The tenants testified that they should be entitled to the return of the security deposit as the unit was occupied for a portion of the time they paid rent.

### **Analysis**

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

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.

In this case, the parties agreed that there was a mutual agreement to end tenancy effective October 15, 2012. The parties furthered agreed there was a mutual agreement that the landlord would retain the security deposit to apply towards unpaid rent for October 2012.

The evidence of the tenants was that they vacated the unit on September 29, 2012, and the keys were returned to the landlord. I find the landlord had legal possession of the unit on September 29, 2012. The landlords were entitled to use the unit in any way they thought was appropriate, including allowing the unit to be occupied once they had legal possession of the unit. I find neither party has proven the other party has violated the Act.

I find that the parties had previously resolved the issue of the unpaid rent and the security deposit by mutual agreement and the parties are bound by that agreement. The fact that the parties later decided not to like the terms of the agreement is not relevant. I find this matter was previously settled my mutual agreement. As a result, I dismiss the application of both parties. The parties are not entitled to recover the cost of the filing fees.

### Conclusion

The landlords' application is dismissed.

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 04, 2013.

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Residential Tenancy Branch

