



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The landlord and one of the named tenants attended the conference call hearing, and both parties gave affirmed testimony. During the course of the hearing, the tenant amended the application to remove the names of the other tenants from the Tenant's Application for Dispute Resolution because those persons did not sign a tenancy agreement and are not named as parties to the tenancy agreement. The amendment was granted, and the style of cause in this Decision reflects the names of the parties that entered into the tenancy agreement.

Both parties also provided evidentiary material prior to the commencement of the hearing to each other and to the Residential Tenancy Branch, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Is the landlord established an entitlement to an order permitting the landlord to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to a monetary order for return of the pet damage deposit or security deposit?

### Background and Evidence

The parties agree that this fixed-term tenancy began on March 1, 2012 and was to expire on February 28, 2013, although the tenant moved from the rental unit on September 30, 2012. Rent in the amount of \$1,995.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and the landlord collected a security deposit from the tenant in the amount of \$1,000.00 at the commencement of the tenancy, which is still held in trust by the landlord.

The parties further agree that a move-in condition inspection report was completed by the parties at the commencement of the tenancy and a move-out condition inspection report was completed by the parties at the end of the tenancy. The tenant provided a forwarding address in writing to the landlord on the move-out condition inspection report.

The landlord testified that on August 1, 2012 the tenant gave written notice to vacate the rental unit effective September 30, 2012 due to gasoline fumes from the landlord's lawn mower business emanating into the rental unit from the garage. The landlord testified that the gasoline containers and lawn mowers were removed from the garage the next day, and on August 5, 2012 the landlord provided the tenants with a letter indicating that the containers were removed, and asking that if there were any further issues to contact the landlord. Copies of both letters were provided for this hearing.

The landlord further testified that the parties had a conversation after the tenant had received the landlord's letter and the tenant had decided to move out in any event.

The landlord advertised the rental unit for rent on Craigslist, but did not provide a date when those advertisements were on the website. The landlord also advertised the rental unit in a local newspaper on September 11, 2012 for an increased amount of rent, and testified that if the tenant was moving out at the end of September, 2012 anyway, the landlord may as well attempt to rent for more. The rental unit was not re-rented, and the landlord ran advertisements again on September 17, 2012 for the amount of rent that the tenant was paying. Copies of the purchase orders for the 2 newspaper advertisements were provided for this hearing. The landlord testified that new tenants were finally obtained, but the new tenants negotiated a lower amount of rent, being

\$1,725.00 per month in addition to utilities. The new tenants started paying rent on November 1, 2012 in that amount, but were permitted to move into the rental unit a few days early since it was vacant by that point.

The landlord also provided a copy of a letter from the new tenants indicating that fumes are not evident in the rental unit, and the landlord testified that the gasoline containers and lawn mowers remain outside of the garage. Further, the landlord testified that the landlord and landlord's spouse resided in that rental unit for 6 years with the gasoline containers and lawn mowers inside the garage and did not notice any fumes inside the rental unit itself.

The landlord claims \$112.60 for advertising costs, \$1,995.00 for rent for October, 2012, and \$270.00 per month for 4 months, November, 2012 to February 28, 2013, being the difference between the rent paid by the tenant and the rent the landlord was able to re-rent for.

The tenant testified that the first few months of the tenancy were good, but toward the summer the landlord repaired lawn mowers in the garage attached to the rental unit, and the fumes from the gasoline went into the rental unit. The tenant was also concerned about a fire hazard. The tenant expressed concern to the landlord, but nothing changed. Further, the tenant's family suffered some health issues as a result, and the tenant's son became ill with swollen glands, but no evidence of such illnesses was provided.

The tenant had a trip planned abroad, and had a very short window to find another place to live and get moved, so the tenant did not withdraw the notice to vacate. The tenant further testified that the landlord did not inform the tenant that the gasoline containers and lawn mowers were removed from the garage until the landlord provided the tenant with the letter 5 days after the tenant gave written notice to vacate.

The tenant claims that the tenant was justified in breaking the agreement, but did not know what a tenant's rights were respecting the fumes that the tenant's family experienced during this tenancy.

The tenant claims \$1,000.00 for return of the security deposit.

### Analysis

It is clear that the parties entered into a fixed term tenancy to expire on February 28, 2013. I accept that the tenant provided the landlord with 2 months written notice to vacate the rental unit, but I am not satisfied that the tenant was justified in breaking the agreement. A landlord is required under the *Residential Tenancy Act* to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. If a landlord fails to do so, the tenant must inform the landlord of the discomfort and give the landlord an opportunity to correct it. If the landlord fails to correct it, the tenant may make an application for dispute resolution to claim an order that the landlord comply with the *Act*, or reduce rent for loss of enjoyment of the rental unit. A tenant may not make a decision to move out of the rental unit prior to the end of a fixed term unless the tenant can establish that the landlord has breached the *Act* or a material term of the tenancy agreement. In this case, I cannot find that the tenant has established that the tenancy had to end as a result of gasoline fumes caused by the landlord or the landlord's business. The tenant had a short window of time to secure a new home due to travel plans, but that is not a reason to continue with the moving plans if the landlord had rectified the concerns of the tenant.

I therefore find that the landlord has established a claim as against the tenant for rent for the month of October, 2012 in the amount of \$1,995.00 and advertising costs in the amount of \$112.60.

With respect to loss of revenue, the *Act* requires any person who makes a claim against the other to do whatever is reasonable to mitigate the loss. In this matter, the landlord received the tenant's letter on August 1, 2012, and then did what was necessary to rectify the tenant's concerns, and provided the tenant with information of how the concerns were rectified in writing on August 5, 2012. The parties testified that there were discussions about it after the August 5, 2012 letter, but the tenant still decided to move out. The landlord has provided evidence that the rental unit was advertised, although at an increased amount of rent, on September 11, 2012. The landlord also provided evidence of having advertised the rental unit on September 17, 2012 for the same amount of rent that the tenant paid. Both advertisements were placed prior to the end of the tenancy, and I find that the landlord has mitigated any loss by re-renting the rental unit as soon as possible.

The *Act* also requires a landlord to return a security deposit or pet damage deposit in full or apply to keep it within 15 days of the later of the date the tenancy ends or the

date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must be ordered to pay the tenant double the amount of such deposits. In this case, I accept that the tenancy ended on September 30, 2012 and the tenant provided a forwarding address in writing on that date on the move-out condition inspection report. The landlord filed the application for dispute resolution on October 10, 2012 which is well within the 15 day period and therefore the tenant is not entitled to double the amount.

In summary, I find that the landlord has established a claim as against the tenant in the amount of \$112.60 for advertising costs, \$1,995.00 for rent for October, 2012, and \$270.00 per month from November 1, 2012 to the end of the fixed term, February 28, 2013 for loss of revenue, for a total of \$3,187.60. The landlord currently holds the \$1,000.00 security deposit, which I find should be set off from the landlord's claim, and I find that the landlord is entitled to a monetary order for the difference in the amount of \$2,187.60. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

The tenant's application is hereby dismissed without leave to reapply.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby order the landlord to keep the \$1,000.00 security deposit, and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,237.60.

This order is final and binding on the parties and may be enforced.

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 08, 2013.

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Residential Tenancy Branch

