



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities, 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 tenant for the cost of the application.

The landlord company was represented at the hearing by an agent who also called one witness. The tenant also attended, and the parties and the witness gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, 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?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 15, 2012 and ended sometime in October, 2012, however the agent did not know the exact date that the tenant moved out of the rental unit. Rent in the amount of \$1,250.00 per month was payable in advance on the 1<sup>st</sup> day of each month.

The landlord's agent further testified that the rental complex was purchased by the named landlord on March 21, 2012 and the tenant's security deposit and pet damage deposit were transferred to the new landlord. Records show that the then landlord collected a security deposit from the tenant in the amount of \$625.00 in February, 2012

and a pet damage deposit in the amount of \$625.00 was collected in March, 2012. Both deposits are currently held in trust by the new landlord who is named in this Application.

The landlord's agent also testified that during the month of October, 2012 the tenant gave written notice to vacate the rental unit effective October 31, 2012. The tenant did not pay any rent for the month of October, 2012. The landlord claims unpaid rent for the month of October, 2012 in the amount of \$1,250.00 as well as loss of revenue for the month of November, 2012 in like amount, as well as recovery of the filing fee for the cost of this application. The rental unit was re-rented for December 1, 2012.

The landlord's witness testified to being the building manager of the apartment complex. The witness testified that the tenant provided written notice on October 13, 2012 stating that the tenant intended to vacate the rental unit on October 31, 2012. An advertisement was placed on Craigslist, a free on-line advertising website, but does not recall the specific date, stating that it was the same day as receiving the tenant's notice to end the tenancy or the day after. It is standard routine to place the advertisement on Craigslist and sometimes on Kijiji, another advertising website, and a sign in the front window. The sign is still there because another rental unit in the complex is coming up for rent.

The witness also testified that a notice to end tenancy was issued on October 17, 2012 to the tenant for failure to pay rent for the month of October. The witness told the tenant that the witness could not show the rental unit to prospective renters without providing the tenant with at least 24 hours written notice and could not advertise the rental unit for rent until the tenant had given written notice to vacate. The tenant gave written notice on October 13, 2012 and the witness gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 17, 2012 and delivered it personally to the tenant, pointing out the section of the form about paying the rent in full within 5 days and page 2 of the form which sets out the dispute options for the tenant.

The witness further testified that it was not, and is not a policy for the landlord to apply the security deposit to unpaid rent. The witness stated that a system is in place, and paperwork is required.

The tenant testified that the tenant emailed the landlord advising that rent would be late, and the landlord replied that the tenant would be evicted. The tenant and the landlord's witness had numerous discussions, wherein the witness advised the tenant that the

rental unit could not be shown until the tenant gave written notice to vacate, so the tenant complied. The tenant had an understanding, based on the conversations with the witness that the tenant had to leave because the tenant had been served with the notice by the landlord, and the witness had told the tenant that if rent wasn't paid on time, the tenant would be evicted.

The tenant located a new place to rent prior to giving the landlord notice to vacate the rental unit, and moved out of this rental unit on October 26, 2012. The tenant believed that the landlord would evict and the tenant would not have an opportunity to find a new home.

### Analysis

The *Residential Tenancy Act* requires a tenant to give written notice to vacate a rental unit at least one month prior to vacating the rental unit and that notice must be given prior to the date rent is payable under the tenancy agreement. In this case, the landlord's agent testified that rent was payable on the 1<sup>st</sup> day of the month and therefore, the tenant was obligated to give notice to vacate by September 30, 2012 in order for the tenancy to end on October 31, 2012.

The tenant testified that the landlord's building manager told the tenant that if rent was late the tenant would be evicted. The tenant needed to find a home quickly, and was able to secure a new rental unit and used the money that would have paid the rent to secure that new rental unit. Although the tenant feared having no home to live in, the tenant was served with the notice to end tenancy which set out the obligations of the tenant, including the fact that the tenant had 5 days to pay the rent once served, and the tenant's rights for disputing the notice. If the tenant still had concerns about the tenant's rights and responsibilities, the tenant ought to have called the Residential Tenancy Branch to inquire. The tenant resided in the rental unit for the most part of the month of October, 2012 and therefore I find that the landlord is entitled to recover rent from the tenant for the month of October, 2012.

With respect to the landlord's application for a monetary order for loss of revenue for the following month, I refer to Residential Tenancy Branch Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent, which states as follows:

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

In this case there were 2 notices to end tenancy. The first was given by the tenant on October 13, 2012 for the tenancy to end on October 31, 2012. The other was a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord on October 17, 2012. The tenant's notice does not legally take effect until the end of November, 2012 because it was provided to the landlord during the month of October, 2012 and therefore I find that the landlord is entitled to recovery of November's rent.

The landlord currently holds a security deposit in the amount of \$625.00 as well as a pet damage deposit in the amount of \$625.00 for a total of \$1,250.00. The landlord has claimed \$1,875.00, being \$1,250.00 for October rent and \$625.00 for half of November rent, and having found that the landlord has established the monetary claim, I also order the landlord to keep the security deposit and pet damage deposit in partial satisfaction of the claim. 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.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit and pet damage deposit and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$675.00.

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 29, 2013

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Residential Tenancy Branch

