



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act), *duly amended in the hearing*, for Orders as follows:

1. A Monetary Order for unpaid rent / loss of revenue - Section 67;
2. An Order to retain the security deposit / pet deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on November 10, 2010 and ended when the tenant vacated on January 14, 2013. Rent in the amount of \$740.00 was payable for the monthly rental period, in advance on the 1<sup>st</sup>. (first) day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350.00. The tenant provided the landlord with a notice to end dated December 14, 2012 – for it to be effective in the middle of the January 2013 rental period. The tenant failed to pay rent in the month of January 2013 and on January 02, 2013 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The landlord's seeks the unpaid rent for January 2013 in the amount of \$740.00.

The tenant testified that on the basis of what a former employee of the landlord had stated to them, and after consulting the Residential Tenancy Branch, they were of the understanding that they provided the landlord with legal Notice to End in compliance with Section 45 of the Act, and that the landlord could simply keep their security deposit in full satisfaction of the 2 week portion for January 2013.

## **Analysis**

Based on the testimony and document evidence of both parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent for January 2013 and did not apply for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

I find that despite the tenant's understanding in respect to proper Notice to End, the tenant did not provide the landlord with Notice to End coinciding with the rental period identified in the tenancy agreement – upon which the Act bases the requirements for a legal Notice to End. The tenant's Notice to End received December 14, 2012 became automatically adjusted per Section 53 of the Act which, in part, states;

### **Incorrect effective dates automatically changed**

53 (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

I find the landlord accepted the tenant's Notice to be effective January 31, 2013.

As a result of all the above, I find that the landlord has established a monetary claim for **\$740.00** in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$790.00**. The security deposit will be off-set from the award made herein.

### ***Calculation for Monetary Order***

Rental Arrears	\$740.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and applicable interest <i>to date</i>	-350.00
<b>Total Monetary Award</b>	<b>\$440.00</b>

**Conclusion**

**I Order** that the landlord retain the deposit of \$350.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$440.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

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: February 14, 2013

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Residential Tenancy Branch

