



# 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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that she provided the tenant with a 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) on September 30, 2012, and a 10 Day Notice to End Tenancy for Unpaid Rent (a 10 Day Notice) posted on the tenant's door on November 2, 2012. The tenant testified that he received the 1 Month Notice, requesting an end to this tenancy by October 31, 2012, but did not receive the 10 Day Notice. The landlord entered into written evidence a copy of a Proof of Service document in which both she and a witness attested to her posting of the 10 Day Notice on the tenant's door at 7:00 p.m. on November 2, 2012. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 27, 2012. In accordance with sections 88 and 90 of the *Act*, I find that the landlord's 10 Day Notice was deemed served to the tenant on November 5, 2012, the third day after its posting. I am satisfied that the landlord served the dispute resolution hearing package to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenant signed a six-month fixed term tenancy agreement with the landlord to cover the period from June 1, 2012 until November 30, 2012, for one of the rooms in the landlord's rental property. The parties agreed that rent for this original room was set at \$575.00, payable in advance on the first of each month. The parties agreed that the tenant moved to the adjacent room in the same property as of July 1, 2012, at which time his rent was reduced to \$550.00. The parties agreed that this move was necessitated by repairs that were required to the original room. The tenant paid a \$287.50 security deposit on or about June 1, 2012 for the original room. The parties agreed that the landlord continues to hold \$275.00 of this security deposit.

The landlord gave undisputed sworn testimony that the tenant did not pay any rent for November 2012. She said that she commenced placing advertisements in the Province, the Sun and on rental websites a few days after the tenant vacated the premises by November 14, 2012. She testified that she was successful in locating a new tenant for this room, who took possession as of December 1, 2012, for the same monthly rent as was being paid by the tenant after July 1, 2012.

Although the tenant did not dispute his failure to pay rent for November 2012, he said that he has a separate civil matter that he plans to initiate against the landlord that will involve his claim for a monetary award in excess of \$5,000.00. He said that he will pursue that issue through the judicial system, rather than through the *Act*. He also maintained that since no new tenancy agreement was created when he switched room by July 1, 2012, he should not be required to fulfill the obligations of the fixed term tenancy agreement he signed for the original room.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of his fixed term residential tenancy agreement because he vacated the rental premises prior to the November 30, 2012 date specified in that agreement. I find no merit to the tenant's claim that he was not bound by the terms of that agreement because both parties agreed to an arrangement where he would continue the rest of his tenancy in the rental room beside the one identified on the tenancy agreement. The tenant confirmed that he lived in the rental unit in question and was responsible for reduced monthly rent of \$550.00 for the remainder of the term of the tenancy agreement for the original room. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for November 2012, the last month of his fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for November 2012. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenant's loss.

I find that the landlord is entitled to a monetary award of \$550.00 for unpaid rent for November 2012, plus a \$10.00 late fee in accordance with the terms of the tenancy agreement. I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable. I also allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

#### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee from the tenant and to retain the tenant's security deposit:

Item	Amount
Unpaid November 2012 Rent	\$550.00
Less Security Deposit	-275.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$325.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: March 06, 2013

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Residential Tenancy Branch

