



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the hearing the Landlord stated that he amended the application to add a claim for damages to the unit and that he sent this amendment with the evidence to the Residential Tenancy on August 16, 2013. The Landlord stated that the Tenant was not provided a copy of this amendment and evidence package. As the Landlord has not served the Tenant with the amendment, I find that to consider the amendment at this stage would prejudice the Tenant and I therefore decline to consider the Landlord's claim for damages to the unit.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on June 1, 2012 for a fixed term to June 1, 2013. The tenancy agreement is silent on whether the Tenant was required to move out of the unit at this time or if the tenancy agreement reverted to a month to month. Rent of \$1,750.00 was payable monthly and at the onset of the tenancy the Landlord collected \$875.00 as a security deposit.

The Landlord states that at the outset of the tenancy, he had no intention to renew the tenancy agreement at the end of the fixed term and that on April 30, 2013 the Tenant was sent a letter informing her that she would need to move out at the end of the tenancy or could stay until September 2013 as the Landlord intended to move into the unit. The Landlord states that the Tenant moved out on May 15, 2013. The Landlord states that he moved into the unit on May 18, 2013. The Landlord claims unpaid rent for May 2013.

The Tenant states that on May 2, 2013 the Landlord verbally informed the Tenant that he wanted to end the tenancy and move into the unit on September 1, 2013. The Tenant states that a day later the Landlord told the Tenant he wanted to move in on July 1, 2013. The Tenant states that on May 5, 2013 the Tenant informed the Landlord that she would move out of the unit on May 15, 2013 as she had found another unit available for that date in the same building. The Tenant states that the April 30, 2013 letter referred to by the Landlord was not received by the Tenant until May 10, 2013 and that it was dated stamped by the post office on May 8, 2012. The Tenant states that this letter confused her as she was trying in good faith to accommodate the Landlord's request to move into the unit and to find another unit as soon as possible. The Tenant states that the Landlord did not serve her with a two month notice as required under the Act and did not provide her with a month's rent. The Tenant states that she told the Landlord to keep the security deposit for the half month rent for May 2013.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given that the Landlord moved into the unit almost immediately after the Tenant moved out, I find that the Landlord is not entitled to rent past May 15, 2013 as there was no loss in relation to this rental to the Landlord.

I also note that had the Landlord acted in accordance with the Act, the Landlord would have given the Tenant a two month notice to end tenancy and would have been required to provide the Tenant with the equivalent of a month's rent. Further, had the Landlord acted in accordance with the Act, the Tenant could have justifiably provided 10 days notice to end the tenancy as was done. Given the Tenant's agreement that the Landlord could retain the security deposit in lieu of the rent for May 1-15, 2013, I find that the Landlord has substantiated the entitlement to retain the security deposit of \$875.00 plus zero interest for the rent that was not paid for this period. As the Tenant had agreed prior to the Landlord making this application that the Landlord could retain the security deposit for the rent owed, I decline to award the filing fee to the Landlord.

### Conclusion

I order the Landlord to retain the security deposit and interest of \$875.00 in full satisfaction of the claim.

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: August 22, 2013

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Residential Tenancy Branch