



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; and was served in person on October 09, 2013.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testifies that this tenancy started on September 07, 2013 for a fixed term tenancy which was due to end on June 30, 2014. The tenant AW signed a tenancy agreement, agreeing to rent this carriage house for a monthly rent of \$1,100.00. The other person named on the application is the tenant's boyfriend who is not a tenant. The tenant failed to pay a security deposit for the unit.

The landlord testifies that the tenant paid the prorated rent for September of \$843.00 however the tenant vacated the rental unit on or about September 28, 2013 without proper notice to end the tenancy and in breach of the fixed term agreement.

The landlord testifies that she placed an advertisement on the internet to re-rent the unit and contacted other interested tenants that had inquired about the unit when the tenant first rented it. The unit was re-rented for October 15, 2013. The landlord seeks to recover the loss of rent from October 01 to October 14, 2013 of \$550.00.

The landlord seeks to recover the cost for advertising the unit on Rent BC which is a site the landlord pays annually for. The landlord seeks to recover \$25.00 for this but has provided no evidence of this cost.

The landlord testifies that the tenant failed to clean the unit thoroughly. The tenant did appear to have done a surface clean but the landlord had to go in and clean the unit again for four hours in order to prepare it for new tenants. The landlord seeks to recover \$25.00 per hour for this work to an amount of \$100.00.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the

tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I refer the parties to s. 45(2) of the *Act* which states:

*A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is 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.*

As this was a fixed term tenancy that was not due to end until June 30, 2014, I find the tenant ended this tenancy before the lease ended and consequently the tenant has breached the tenancy agreement made between the parties. A landlord is therefore entitled to be compensated for any loss of rent up to the time the tenant could have either legally ended the tenancy or the date the unit was re-rented. Therefore it is my decision that the landlord is entitled to recover a loss of rent for 15 days in October to the amount of **\$550.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for the cost of advertising the unit; the landlord has provided insufficient evidence to show that a cost of \$25.00 was made to advertise this unit for re-rental. Consequently the landlord has not met the burden of proof and the landlords claim must be denied.

With regard to the landlords claim for cleaning the unit; Under the Residential Tenancy Act s. 32 a tenant is responsible to maintain "reasonable health, cleanliness and

sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlord has not shown that the tenant failed to meet the "reasonable" standard of cleanliness required. This section of the landlord's claim is therefore denied.

With regard to the landlords claim to recover the security deposit; A security deposit is an amount held in trust by a landlord until the end of the tenancy. If a tenant has failed to pay the security deposit within 30 days of the start of the tenancy then a landlord may issue a tenant with a One Month Notice to End Tenancy based on this ground. A landlord is not entitled to recover a security deposit that has not been paid. Consequently, this section of the landlord's claim is denied.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$600.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

As there is one named tenant on the tenancy agreement the Monetary Order will be issued in the name of that tenant only.

The reminder of the landlord's application is dismissed without leave to reapply.

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: November 18, 2013

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Residential Tenancy Branch

