



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authority to retain the security deposit, and to recover the filing fee.

The landlord attended at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The landlord testified that the tenant was served the Notice of Hearing and evidence was served by registered mail to the tenant on December 7, 2013 to the tenant’s forwarding address provided by the tenant as their written forwarding address dated November 19, 2013. The landlord provided a registered mail tracking number in evidence which according to the registered mail tracking website showed as “successfully delivered” on December 10, 2013. Based on the undisputed testimony of the landlord and the tracking information provided, I accept that tenant was served on December 10, 2013, which is supported by the registered mail tracking website.

### Preliminary and Procedural Matters

The landlord testified that he was seeking unpaid rent, which was supported by the details of dispute provided by the landlord in his application for dispute resolution. As a result, and pursuant to section 64(3) of the Act, I will permit the landlord to amend his application to include a claim for unpaid rent, as I find the details of dispute support that the landlord intended to also claim for unpaid rent.

During the hearing, the landlord requested to reduce his monetary claim from \$2,050.00 to \$900.00, comprised of unpaid rent of \$100.00 for the month of November 2013, plus \$800.00 for loss of rent for the month of December 2013. I find that a reduction in the landlord's monetary claim does not prejudice the tenant, and as a result, I will permit the landlord's claim to be reduced to \$900.00 for unpaid rent and loss of rent.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

The landlord testified that a fixed term tenancy agreement began on July 1, 2013 and was scheduled to revert to a month to month tenancy after December 31, 2013. Monthly rent of \$800.00 per month was due on the first day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that the tenant moved out of the rental unit without any written or verbal notice on November 21, 2013. The landlord stated that he completed an outgoing condition inspection report with the tenant on December 1, 2013. The landlord stated that the tenant owes \$100.00 for the unpaid portion of November 2013 rent, and that he suffered a loss of December 2013 rent of \$800.00 as the tenant failed to provide proper notice under the *Act*.

The landlord testified that the rental unit was advertised starting on December 2, 2013, and that a new tenant was secured effective January 1, 2014. The landlord applied for dispute resolution claiming towards the tenant's security deposit on December 2, 2013, having received the tenant's written forwarding address on November 19, 2013.

### Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Claim for unpaid rent and loss of rent** – The landlord testified that a fixed term tenancy began on July 1, 2013, and was scheduled to revert to a month to month tenancy after December 31, 2013. The landlord stated that on November 21, 2013, the tenant vacated the rental unit without any prior written or verbal notice to the landlord. The landlord stated that the tenant failed to pay \$100.00 of her November 2013 rent, and that he suffered a loss of \$800.00 for December 2013 rent due to the tenant failing to provide proper notice under the *Act*. Section 45 of the *Act* states regarding a fixed term tenancy:

**45 (2) 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.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

**[my emphasis added]**

Given the above, **I find** the tenant breached section 45 of the *Act* as she was not authorized to end her fixed term tenancy earlier than December 31, 2013. Section 7 of the *Act* states:

**7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.**

**(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.**

**[my emphasis added]**

Based on the above, **I find** the landlord complied with section 7 of the *Act* by securing a new renter effective January 1, 2014, which limited his loss to \$800.00 for December 2013, which does not include the \$100.00 in unpaid rent for the month of November 2013.

Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenant failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month by failing to pay \$100.00 of November 2013 rent. **I find** the landlord applied for dispute resolution within 15 days of receiving the tenant's written forwarding address on November 19, 2013, and November 21, 2013, which was the date the tenant vacated the rental unit, as the landlord applied for dispute resolution on December 2, 2013.

Given the above, **I find** the landlord has met the burden of proof and has established a monetary claim of **\$900.00** comprised of \$100.00 owing by the tenant for the unpaid portion of November 2013 rent, plus the loss of \$800.00 for December 2013 rent due to the tenant breaching section 45 of the *Act*. The landlord was able to minimize his loss by securing a new renter effective January 1, 2014.

As the landlord has succeeded with his application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

The tenant's security deposit of \$400.00 has accrued \$0.00 interest since the start of the tenancy.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Unpaid portion of November 2013 rent	\$100.00
Loss of December 2013 rent	\$800.00
Filing fee	\$50.00
<b>Subtotal</b>	<b>\$950.00</b>
<i>(Less Tenant's Security Deposit with \$0.00 interest )</i>	<i>-( \$400.00)</i>
<b>TOTAL AMOUNT OWING BY TENANT TO LANDLORD</b>	<b>\$550.00</b>

I find that the landlord has established a total monetary claim of **\$950.00** as described above. **I ORDER** the landlord to retain the tenant's full security deposit of \$400.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$550.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I find that the landlord has established a total monetary claim of \$950.00. The landlord has been ordered to retain the tenant's full security deposit of \$400.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance due of \$550.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 25, 2014

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Residential Tenancy Branch

