



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD

### 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 retain the security deposit - Section 38.

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

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

### Background and Evidence

The Parties signed a tenancy agreement in October 2013 and paid a security deposit of \$650.00 for a tenancy to start on November 1, 2013. Rent of \$1,300.00 was to be payable on the first day of each month. The Tenant provided also provided a pre-authorized debit of \$650.00 for November 1, 2013 for a pet deposit.

The Landlord states that the Tenant did not attend the unit to pick up the keys and do a move-in inspection as agreed on October 31, 2013 and did not respond to calls so on November 2, 2013 a 10 day notice to end tenancy was posted on the door. The Landlord states that they again were in contact with the Tenant in early November, no mention was made of the 10 day notice to the Tenant and an agreement was made for the Tenant to meet with the Landlord on November 12, 2014 to pick up the keys to the

unit. The Landlord states that the Tenant did not appear and again did not respond to their calls. The Landlord states that the Tenant's belongings were brought to the unit to move-in on November 17, 2013 but the Landlord did not allow the Tenant to move into the unit and turned the movers away. The Landlord states that the Tenant sent them an email that same day apologizing and offering to pay for both November and December 2013 rent immediately. The Landlord states that although they had both the security deposits deposited into their account, these deposits were reversed by the bank and returned to the Tenant. The Landlord states that the unit was rented again for February 1, 2014. The Landlord claims unpaid rent for November 2012.

The Tenant states that the events as stated by the Landlord were as a result of miscommunication and that when offered the full rent that was due, the Landlord refused. The Tenant states that she obviously never saw the 10 day notice as she was not allowed access to the unit. The Tenant disputes that she owes any money to the Landlord as she was not given access to the unit. The Tenant agrees that the Landlord no longer holds the security deposits.

### Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. 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.

It is clear that the Tenant did not pay the rent for November 2013 on the first day of the month however I accept the Tenant's evidence that the Tenant did offer to pay the outstanding rent and was refused, as was her right to occupy the unit refused. Given that the Landlord did not allow the Tenant to move into the unit or pay the rent despite

the Tenant having a right to occupy the unit, I find that the Landlord both caused the loss claimed and failed to act to mitigate its losses. I therefore dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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 17, 2014

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Residential Tenancy Branch

