



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

At the hearing, the tenants objected to the admission of the landlord's evidence as it had been submitted just 3 days prior to the hearing in contravention of the Rules of Procedure. I did not need to consider this evidence in my deliberations and therefore it was unnecessary to rule on whether it was admissible.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

Most of the facts are undisputed. The tenants originally lived in a different suite in the building, moving in on September 1, 2012, and on September 1, 2013 moved to the rental unit. Rent was set at \$850.00 per month. At the beginning of the first tenancy in the original suite, the tenants paid a \$775.00 security deposit.

On November 10, 2013, the tenants sent the landlord an email advising that they were considering ending the tenancy and on November 11 they confirmed that they would be moving on November 30 and offered to advertise the rental unit. The landlord reviewed and approved their Craigslist advertisement and the landlord also placed an advertisement to which he received 3 inquiries. The landlord was unable to re-rent the unit until January 1, 2014.

The tenants testified that they vacated the rental unit on short notice because another occupant of the building had threatened them several times throughout their tenancy.

The tenants said they no longer felt comfortable living in the unit and believed they needed to move for their personal safety.

The landlord responded by saying that the tenants had lived in the building for more than a year and had chosen to move from the original suite to the rental unit knowing of the problems with the other occupant, which indicates that it was not as severe as they now claim.

The landlord seeks to recover loss of income for the month of December 2013.

### Analysis

Section 45(1) of the Act requires tenants to give one full month's notice to end their tenancy, which means that in order to end their tenancy on November 30, the tenants would have had to have given their notice no later than October 31, 2013. The Act recognizes that there are times in which a tenancy must end on shorter notice and section 45(3) provides that if a landlord has breached a material term of the tenancy agreement, the tenants may give written notice that the landlord has breached a material term and give him a reasonable period in which to correct the breach. If the landlord fails to correct the breach within that reasonable time, the tenants may end the tenancy abruptly.

At the hearing, the tenants acknowledged that they had not written to the landlord advising him that he had breached a material term and given him time to correct the breach. I find that the tenants did not have the right to end the tenancy on less than one full month's notice.

Section 53 of the Act provides that if the effective date on a notice to end a tenancy does not comply with the Act, the effective date is automatically changed. As a result, I find that the effective date of the tenants' notice to end their tenancy was automatically changed to December 31, 2013. I further find that the landlord took reasonable steps to mitigate his losses.

I find that the tenants are obligated to pay rent for the month of December and I award the landlord \$850.00. As the landlord has been successful in his application, I find that he is entitled to recover the filing fee paid to bring the application and I award him \$50.00 for a total entitlement of \$900.00.

### Conclusion

The landlord has been awarded \$900.00. I order the landlord to retain the \$775.00 security deposit in partial satisfaction of the claim and I grant him a monetary order

under section 67 for the balance of \$125.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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: April 11, 2014

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Residential Tenancy Branch

