



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD

### Introduction

This is a Review Hearing granted of a landlord's application for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss and to keep all or part of the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

At the end of the hearing, the landlord clarified that she was only an agent and no longer employed for the owner of the rental property. The landlord's agent wished to add the owner, G.S. to the Application. The tenant stated she had no objection. As such, the landlord's name shall be added. Both parties also confirmed the mailing addresses for delivery of the decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

### Background and Evidence

The landlord states that this tenancy began on December 1, 2013 on a fixed term tenancy ending on July 1, 2014 and then thereafter on a month to month basis as shown by her submitted copy of the signed tenancy agreement dated December 10,

2013. The monthly rent was \$700.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$350.00 was paid on December 1, 2013.

The tenant states that this tenancy began on December 1, 2013 on a fixed term tenancy ending on June 1, 2013 and then thereafter on a month to month basis as shown by her copy of the signed tenancy agreement dated December 5, 2013. The monthly rent was \$700.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$350.00 was paid on December 1, 2013.

The landlord seeks a monetary claim of \$2,450.00 which consists of the tenant failing to pay rent of \$350.00 for April and vacating the rental unit without notice on May 4, 2014 for the loss of rental income for May, June and July of \$700.00, totalling, \$2,100.00 as the landlord was unable to re-rent the unit.

The landlord states that the tenant failed to pay all of the rent for April owing \$350.00. The tenant disputes this stating all of the rent for April was paid. The landlord states that the tenant failed to provide written notice to vacate the rental unit and vacated the rental unit on May 4, 2014. The tenant confirmed that she vacated the rental unit prior to the end of the fixed term tenancy on May 1, 2014 without giving written notice. The tenant confirmed in her direct testimony that although verbal notice was given the landlord would not accept it until written notice was given. Both parties rely on the tenant's submitted copy of a facebook page exchange. The page has a date of May 4, 2014 and starts at 6:24pm. "I hooked up my phone at my cousins house and that is where he called from. I cant personally clean out the unit and I said we can pay you 50.00 a month til 350.00. I have no reason to lie to you. So I don't need to stop lying when there is nothing to lie about. I will leave the keys at unit...I will come and see you tomorrow and get you to sign something to pay back the 350.00 in payment...Ok...My boss said 100 a month til paid off ok." The tenant states that this is in reference to an agreement to pay the landlord \$350.00 for ending the tenancy prematurely. The landlord disputes this stating that it was an agreement for the tenant to pay off the outstanding April rent of \$350.00.

The landlord states that she made a new tenancy agreement for the tenant to provide to the ministry for support by removing the co-tenant, A.M. from the signed tenancy agreement and changing the dates. The tenant disputes this stating that her copy is the only one received from the landlord and that the landlord's version was false.

### Analysis

I accept the evidence provided by both parties and note that the landlord was given every opportunity to provide additional direct testimony, but failed to provide any details of any damages to the rental unit. Each party has provided a different signed tenancy agreement as well as different facts concerning the end of the tenancy. The landlord states that the tenant failed to pay all of the rent owed and vacated the rental unit. The tenant has stated that rent was paid but that she vacated the rental unit early prior to the end of the tenancy.

The onus or burden of proof lies with the party who is making the claim. In this case it belongs to the landlord. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The landlord has not provided any supporting evidence that there was unpaid rent, for example a tenant ledger, receipts or a 10 day notice to end tenancy issued for unpaid rent. On the landlord's claim of unpaid rent of \$350.00, I find that the landlord has failed to establish a claim. This portion of the claim is dismissed. The tenant has admitted to failing to provide proper written notice to end a tenancy. In the landlord's signed tenancy agreement the fixed term is for 6 months ending on July 1, 2014. I note that this date exceeds 6 months. In the tenant's signed tenancy agreement the fixed term is for 6 months ending on June 1, 2014, which is 6 months. The tenant has acknowledged that no written notice was provided to the landlord. I find that in either case, the landlord has established a claim for loss of rental income for May 2014 of \$700.00. As for the landlord's claim for June and July loss of rental income for \$1,400.00, I find that the landlord has been unsuccessful. The landlord has not provided sufficient evidence to satisfy me that the end of the fixed term tenancy was July 1 instead of June 1. The landlord's claim for loss of rental income for June is dismissed. In either case, there is no loss of rental income for July as the landlord's version ends on July 1, 2014. The landlord's claim for loss of rental income for July is dismissed.

The landlord has established a claim for \$700.00 for the loss of rental income of May 2014. I order that the landlord retain the \$350.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$350.00.

Conclusion

The landlord is granted a monetary order for \$350.00.  
The landlord may retain the security deposit.

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 27, 2014

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Residential Tenancy Branch

