



# Dispute Resolution Services

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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 pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

Both parties attended and the tenant agreed they received the Notice to end Tenancy dated January 16, 2015 and the Application for Dispute Resolution by personal service. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated January 16, 2015 for unpaid rent. The tenant has vacated. Is the landlord now entitled to a Monetary Order for rental arrears, damages and filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. This hearing was complicated by the fact that the landlord amended their application yesterday on February 10, 2015 and filed numerous documents and photographs which the tenant has never received as the landlord said he had no forwarding address. The tenant would also like an opportunity to do a condition inspection report with the landlord and provided their new address to the landlord in the hearing so this can be arranged and evidence served on them. The tenant also filed their evidence late on February 6, 2015. Since the rental issue is a separate issue, I decided to sever the damage claim and give leave to reapply on that

issue. There was sufficient evidence filed in time to decide the sufficiency of notice and the rental issue.

The undisputed evidence is that the tenancy commenced on February 1, 2013 on a month to month lease, the rent was \$1600 a month, payable on the 1<sup>st</sup> of the month and a security deposit of \$800 and a pet damage deposit of \$800 were paid. The landlord claims that by the end of December 2014, the tenant owed \$1925 in rent and also owes \$3200 for January and February 2015. The tenant at first disputed the amounts owing but then, after consulting his records agreed that he owed \$1925 up to December 31, 2014 and had not paid rent for January or February 2015. The tenants received a ten day Notice to End Tenancy dated January 16, 2015 to be effective January 26, 2015. They provided evidence that they gave Notice to End their tenancy on January 4, 2015 to be effective February 1, 2015 and submit they should not be responsible for February's rent. They submit that the landlord did not make good effort to re-rent the home for February 1, 2015.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

I find the tenant gave Notice to End tenancy on January 4, 2015. According to section 45 of the Act:

*45 (1) A tenant may end a periodic 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, and*

*(b) 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 explained to the parties in the hearing, this means a Notice to End Tenancy served in January involving tenancies with rent payable on the 1<sup>st</sup> of the month would not be effective until February 28, 2015. I find the tenants responsible to pay rental loss for February 2015. I find the fact that the landlord served a Notice to end Tenancy for unpaid rent does not relieve the tenants from the responsibility to give sufficient notice. In respect to the tenant's submission that the landlord did not make good effort to re-rent the unit, I find the tenants did not vacate and return keys until January 25, 2015 and apparently there were some repairs to be made; I find it improbable that the landlord

could find new tenants in so short a time so I find insufficient evidence to support the tenant's submission.

#### Monetary Order

I find that there are rental arrears in the amount of \$1952 to the end of December 2014 plus \$3200 for January and February 2015.

#### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I sever the landlord's claim for damages to the unit and give them leave to reapply after they have completed all inspections and service of documents.

#### Calculation of Monetary Award:

Rent arrears to December 31, 2014	1925.00
Rent owed for January 2014	1600.00
Rental loss for February due to insufficient notice	1600.00
Filing fee to landlord	100.00
Less deposits	-1600.00
Total Monetary Order to Landlord for rent	3625.00

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: February 11, 2015

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Residential Tenancy Branch

