



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNR, MNSD, MNDC, FF

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution the Landlords sought the following Monetary Orders: for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and, to recover the filing fee. The Tenant sought return of double the security deposit.

At the outset of the hearing, the Tenant confirmed that she made a typographical error and that she was seeking double the security deposit paid, namely the sum of \$1,100.00, rather than the \$11,000.00 noted on her application. Similarly, the Landlord confirmed they only sought the sum of \$750.00 for rent for October 2014 as well as the \$50.00 filing fee for a total of \$800.00.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Tenant entitled to return of double her security deposit and recovery of the filing fee?

### Background and Evidence

The parties agreed that although the Tenant initially agreed to rent the rental unit, shortly after she advised the Landlord in writing that she would not be proceeding with the rental.

Introduced in evidence was a copy of the Residential Tenancy Agreement providing that the rental period was to start on October 1, 2014 for a six month fixed term in which the Tenant was also to pay \$750.00 per month. The Landlord confirmed that on September 12, 2014 the Tenant paid as security deposit of \$375.00 and a pet damage deposit of \$200.00 for a total of \$575.00.

The Landlord testified that on September 22, 2014, the Tenant advised in writing that she would not be moving into the rental unit.

The Landlord testified that they attempted to rent the rental unit out for October 1, 2014 by advertising on the building, having two full time managers on site, as well as advertising on popular internet rental sites. According to the Landlord as the Tenant only gave notice 8 days prior to the end of the month the Landlord was not able to rent the rental unit until November 1, 2014. The Landlord confirmed the rental unit was rented out for \$750.00, the same amount the Tenant agreed to pay.

The Landlord sought a Monetary Order for the rental loss for October 2014 and to recover the filing fee. The Landlord further sought an Order that they be permitted to retain the security deposit of \$375.00 and apply it to the amounts owing by the Tenant.

The Tenant testified that she agreed to rent the rental unit on September 12, 2014 at which time she paid the security and pet damage deposit. She stated that six days later, her brother passed away following which, and on September 20, 2015, she told the Landlord (on the telephone) that she would not be renting the rental unit. She sought return of double the security and pet damage deposit paid.

The Tenant testified that the Landlord failed to mitigate their loss and advertise the rental unit. The Tenant claimed that the Landlord took the rental unit off their website for a month.

In response the Landlord testified that the rental unit was advertised until rented November 1, 2014. Further, the Landlord testified that the ad was not removed and that the signage is up constantly, as well, since they have over 200 units, the ads are also running constantly. The Landlord reiterated that as the Tenant gave notice so late in the month, and despite their best efforts, they were not able to rent the unit out for October 1, 2014 and as such sought to recover the lost rent for October 2014.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 1 of the Act provides as follows:

**“tenancy agreement”** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

While the parties agreed that the tenant did not move into the rental unit, I find that a binding contract exists. The fundamental elements of a binding contract are: offer; acceptance; and, consideration. In this case, the Landlord *offered* the rental unit; the Tenant *accepted* the rental unit; and the Tenant paid the security deposit of \$375.00 and pet damage deposit of \$200.00 to the Landlord. This payment satisfies the final element or *consideration* thereby creating a valid contract.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I am satisfied that the Landlord suffered a loss of \$750.00 for the October 2014 rent as a result of the Tenant not following through with the tenancy. I am further satisfied that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed by advertising the rental unit. I also accept that the late notice contributed to the Landlord’s inability to rent the rental unit for October 2014.

For the above reasons, I grant the Landlord’s monetary claim for \$800.00 representing the sum of \$750.00 for lost rent for October 2014 as well as the \$50.00 fee paid to file the application. Although there clearly was no damage caused by the Tenant’s pet, and the Landlord should now return the pet damage deposit, I find that an appropriate Order is to allow the Landlord to set off the deposits paid against the \$800.00 awarded in this my decision. Accordingly, the Landlord may retain the \$575.00 paid by the Tenant against the \$800.00 owing and the Landlord is granted a Monetary Order for the balance due of \$225.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

A valid tenancy agreement existed between the parties, and the Landlord suffered a loss of rent for October 2014 when the Tenant failed to follow through on the agreement.

The Landlord is entitled to recover the \$750.00 rent for that month as well as the filing fee. The Landlord may apply the \$575.00 held in trust as a security and pet damage deposit against the amount owing and is granted a Monetary Order for the sum of \$225.00.

The Tenant'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: May 8, 2015

---

Residential Tenancy Branch

