



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenant JC and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on September 28, 2012 for a fixed term tenancy that expired on September 30, 2013 and thereafter continued as a month to

month tenancy. Rent for this unit was \$1,050.00 per month due on the 1<sup>st</sup> of each month in advance. The tenants paid a security deposit of \$525.00 on September 20, 2012.

The landlord testified that the tenants gave late notice to end the tenancy. Written notice was not received until January 14, 2015 with an effective date of January 31, 2015. In the written notice the tenants agreed to pay rent for February if the landlord is unable to re-rent the unit for February 01, 2015.

The landlord testified that an advertisement was placed on their website and then on an internet site. At the time the landlord had three other units also vacant in the building. The landlord uses a process to advertise vacant units. As soon as the landlord receives written notice from a tenant the unit is advertised on the company website normally within 24 hours there is a real estate program called the Roof Program which transfers the advertisement for any vacant units onto different internet sites. The units are also advertised in a local newspaper. All four of the units were advertised the same way and they all re-rented on March 01, 2015.

The landlord testified that the tenants first agreed to pay the rent for February then they later put a stop payment on their rent cheque. Due to this the landlord seeks to apply the provision under the tenancy agreement to collect late fees of \$25.00 and an NSF fee of \$25.00. The landlord seeks to recover a loss of rental income for February of \$1,050.00. The landlord also seeks an Order permitting the landlord to keep the security deposit to apply to the unpaid rent.

The tenant disputed the landlord's claim the tenant testified they did give late Notice on January 14, 2015 but felt that the landlord did not make a reasonable effort to get the unit re-rented for February 01, 2015. It was the tenants' intention to pay rent for February but found the landlord had only placed a basic advert on their company website and no adverts had been placed on the internet sites. The tenant testified that they did not look in the newspaper for an advert. The unit was not shown for two weeks after notice had been given by the tenants. The person who rented the unit lived below

the tenants and was a friend of the tenants. This person told the tenants that he had rented the unit for March 01 and was not given the option to move into it during February.

The tenants therefore do not feel responsible for February's rent, late fees or NSF fee and seek to recover their security deposit.

The landlord testified that the tenant who rented their unit also lived in the building and had not given notice for his unit. Therefore his unit was also advertised but he could not legally end his tenancy to move into these tenants' unit until either March 01, 2015 or if his unit re-rented during February. As his unit did not re-rent until March 01, 2015 this was the earliest he could take possession of the tenants' unit.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45 of the *Act* which states:

**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.*

The tenant agreed he did provide late notice on January 14, 2015 contrary to s. 45(1) of the *Act*.

S. 7(2) of the *Act* states:

*2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The tenant argues that they could not find an advert for their unit on any internet sites and therefore the landlord has not done what is reasonable to re-rent the unit. The landlord argued that the unit was placed on the company website and then the Roofing Program transfers this to the internet sites. The landlord has not provided evidence of the unit being on an internet site; however, the Act does not specify how a landlord must advertise a unit only that the landlord must do whatever is reasonable to minimize the loss.

I am satisfied on a balance of probability that the landlord did make reasonable attempts to re-rent the unit. I find the landlord's evidence credible that an advertisement was put on the company website and in the paper. Even though the unit was eventually re-rented to another tenant living in the building, as that tenant had not provided notice for his unit prior to the end of January, he could not legally end his tenancy on his unit to move into the tenant's unit prior to March 01, 2015 unless his unit also re-rented sometime in February. I am satisfied with the landlord's evidence that all four units re-rented on March 01, 2015.

It is therefore my decision that the landlord is entitled to recover a loss of rent for February of **\$1,050.00**. I am further satisfied that the landlord is entitled to recover a late fee of **\$25.00** for February and a fee of **\$25.00** for a fee for the stopped cheque by their financial institution as agreed to under the tenancy agreement clause 10.

I Order the landlord to keep the security deposit of **\$525.00** in partial satisfaction of their claim pursuant to s. 38(4)(b) of the Act. As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent for February	\$1,050.00
Late fee and bank fee	\$50.00
Filing fee	\$50.00
Less security deposit	(-\$525.00)
Total amount due to the landlord	\$625.00

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$625.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: August 20, 2015

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Residential Tenancy Branch

