



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNR, MNSD, MNDC, O, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting to recover unpaid rent and /or utilities; for compensation for damage or loss under the Act; to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

The Tenant filed to dispute the amount of rent he owes the Landlord for the month of December 2016.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing 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.

### Preliminary and Procedural Matters

The Tenant applied for dispute resolution on December 8, 2016. On May 24, 2017, the Residential Tenancy Branch received 24 pages of documentary evidence from the Tenant. The Tenant testified that he tried to serve his evidence to the Landlord using mail, but could not because the Landlord has moved. The Tenant submitted that he sent his evidence to the Landlord using email.

The Landlord testified that he was not served a copy of the Tenant's evidence prior to the hearing. The Landlord confirmed that he has moved and did not receive the evidence.

Since the Landlord has not had an opportunity to consider and respond to the Tenant's evidence prior to the hearing, the Tenant's documentary evidence will not be accepted or considered in this hearing.

The Tenant confirmed that he has received a copy of the documentary evidence that the Landlord provided for this hearing.

#### Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to keep the security deposit in satisfaction of unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Parties testified that the tenancy began on May 1, 2016, as a month to month tenancy. Rent in the amount of \$750.00 was due on the first day of the month. The Tenant paid the Landlord a security deposit of \$375.00. The Tenant moved out of the rental unit on December 9, 2017.

#### December 2016, Rent

The Landlord testified that the Tenant gave him written notice to end the tenancy. He testified that the Tenant did not want to pay the rent for December 2016, and asked the Landlord to use the security deposit towards the rent.

The Landlord testified that the Tenant moved out on December 9, 2016, and did not pay the \$750.00 rent due for December under the tenancy agreement.

The Landlord testified that there was no agreement reached that the Tenant only had to pay half a month's rent. The Landlord testified that there was no written agreement reached that the Landlord would accept the security deposit towards the December 2016, rent.

The Landlord testified that the rental unit was not re-rented by a new occupant until January 2017.

In response, the Tenant testified that there was an email proposal dated November 16, 2016, from the Landlord that states the Tenant can pay \$375.00 for December 2016, rent, and that if the rental unit was vacant and clean by December 15, 2016, the Landlord would return the security deposit to the Tenant.

The Tenant submitted that the Landlord's email gave him permission to move out on December 15, 2016, and pay half a month's rent which would negate his security deposit.

The Landlord responded that he engaged in informal discussions with the Tenant in person and by email, but the Tenant did not agree and no binding agreement was reached. He testified that there is no written agreement that is signed by the parties.

The Landlord is seeking to keep the security deposit in the amount of \$375.00 in partial satisfaction of the unpaid rent for December 2016.

The Landlord seeks a monetary order in the amount of \$375.00 for the balance of the unpaid rent, and seeks to recover the \$100.00 fee for the cost of the Application for dispute resolution.

### Analysis

Section 26 of the Act states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 21 of the Act states that unless the Landlord gives written consent, a Tenant must not apply a security deposit or a pet damage deposit as rent.

Section 45 of the Act states that a tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

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

I find that the parties entered into discussions surrounding the end of the tenancy and the acceptance of the security deposit towards rent; however there was no agreement reached. In the email evidence provided, the Landlord asked the Tenant if he is good with the proposal that the tenancy can end on December 15, 2016. In a response from the Tenant the next day, the Tenant states he will not be making any deals until he gets legal advice. In the absence of an agreement between the parties, I find that the Tenant was obligated to pay the rent for the entire month of December 2016.

I find that the effective date of Tenants written notice to end the tenancy effective December 15, 2016, does not comply with section 45 of the Act. I find that the tenancy was a month to month tenancy and rent was due to be paid by the first day of each month. Any written notice to end tenancy that the Tenant gave to the Landlord in November 2016, automatically corrects to be effective December 31, 2016.

I find that the Tenant did not pay the rent owing under the tenancy agreement for December 2016, and owes the Landlord \$750.00.

I authorize the Landlord to keep the security deposit of \$375.00 in partial satisfaction of the claim for unpaid rent and I find that the Tenant owes the Landlord the balance of \$375.00 for unpaid rent for December 2016.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with his application, I order the Tenant to pay the \$100.00 for the cost of the filing fee for this hearing.

I grant the Landlords a monetary order in the amount of \$475.00. This order must be served on the Tenant and may be enforced in Provincial Court.

### Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement for the month of December 2016.

I authorize the Landlord to keep the security deposit of \$375.00 in partial satisfaction of the claim for unpaid rent and I find that the Tenant owes the Landlord the balance of \$375.00 for unpaid rent for December 2016.

I grant the Landlords a monetary order in the amount of \$475.00. This order must be served on the Tenant and may be enforced in Provincial 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: July 4, 2017

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Residential Tenancy Branch