



# 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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that on April 27, 2017 the Application for Dispute Resolution, the Notice of Hearing and 8 pages of evidence the Landlord submitted with the Application for Dispute Resolution were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or utilities and to retain the security deposit?

### Background and Evidence

The Landlords and the Tenants agree that:

- this tenancy began on August 01, 2016;
- the Tenants agreed to pay rent of \$1,600.00 by the first day of each month;
- the Tenants paid a security deposit of \$800.00 and a pet damage deposit of \$200.00; and
- the Landlords returned \$100.00 of the security/pet damage deposits.

The female Tenant stated that she left a forwarding address in the Landlords' mail box on August 18, 2017. The female Landlord stated that the address was located on August 19, 2017.

The female Tenant stated that on March 02, 2017 she left a letter on the counter in the Landlord's home, in which the Tenants informed the Landlords of their intent to vacate the rental unit on April 01, 2017. The female Landlord stated that this letter was not located. The female Tenant stated that the Tenants did not retain a copy of this letter.

The female Tenant stated that on March 02, 2017 she also left an unsigned Mutual Agreement to End the Tenant, which declared that the Tenant would end on April 01, 2017. The female Landlord stated that they were not home on March 02, 2017 and that this document was located when they returned home on March 14, 2017.

The Landlords are seeking compensation of \$800.00 in compensation for lost revenue for the first two weeks in April of 2017. The female Landlord stated that they were able to re-rent the unit to a couple on a short-term basis for the last two weeks in April of 2017. The Landlords submitted a receipt that indicates the Landlords received rent of \$800.00 for the period between April 15, 2017 and April 30, 2017.

The Tenants contend that they came to the building on April 03, 2017, at which time furniture and boxes were observed inside the rental unit. The Tenants submit that this shows the rental unit was rented prior to April 15, 2017.

The Landlords contend that they were loaning some furniture and kitchen items to the new tenants, as they were only occupying the rental unit for a short term.

The Landlords and the Tenants agree that the male Landlord sent them a message in which he told the Tenants they could leave their personal property in a storage area until April 07, 2017 until the new tenants "sorted out the house". The Tenants contend that this text indicates the new tenants were moving into the house prior to April 15, 2017. The male Landlord stated this reference to the Tenants sorting out the house was a reference to the new tenants sorting out their previous home in Alberta.

### Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlords that required the Tenants to pay monthly rent of \$1,600.00 by the first day of each month.

Section 45 of the *Residential Tenancy Act (Act)* stipulates that a tenant may end a periodic tenancy by providing their landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

Even if I accepted the Tenants' submission that a notice to end tenancy, which declared the tenancy was ending on April 01, 2017, was left on the Landlords' counter on March 02, 2017, I would find that the Tenants had not provided proper notice to end the tenancy on April 01, 2017.

As the rent was due on the first day of each month, the Tenants did not have the right to give notice to end the tenancy on the first day of any month. Rather, they were obligated to end the tenancy on the last day of a month.

To end this tenancy on March 31, 2017 in accordance with section 45 of the *Act*, the Tenants were required to give written notice of their intent to end the tenancy on, or before, February 28 2017.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was allegedly given on March 02, 2017 was April 30, 2017. I therefore find that the notice to end tenancy that was allegedly given on March 02, 2017 would serve to end this tenancy on April 30, 2017.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. As the Tenants had not properly ended this tenancy by March 31, 2017, I find that the Tenants were obligated to pay rent of \$1,600.00 when it was due on April 01, 2017.

In these circumstances the Landlords are only claiming compensation for unpaid rent in the amount of \$800.00, and I grant that amount to the Landlords.

In concluding that the Landlords are entitled to their claim for unpaid rent I find, on the balance of probabilities, that the Landlords mitigated their losses by re-renting their rental unit for April 15, 2017. I find that the receipt the Landlords submitted which

shows they received rent from a third party for the period between April 15, 2017 and April 30, 2017 serves to corroborate this testimony.

I find that the Tenants have submitted insufficient evidence to support their submission that the rental unit was rented in the first two weeks of April of 2017. Although I accept the Tenants' submission that there was furniture and boxes in the rental unit on April 03, 2017, I find that the Landlords have provided a reasonable explanation for the presence of those items and I cannot conclude that it establishes that the new tenants were paying rent prior to April 15, 2017.

While I also accept that the Tenants were permitted to leave property in the storage area until April 07, 2017 until the new tenants "sorted out the house", I find that the Landlords provided a reasonable explanation for the comment made by the male Landlord. I therefore cannot conclude that this message establishes that the new tenants were paying rent prior to April 15, 2017.

I find that the Landlords' application has merit and that the Landlords are entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Landlords have established a monetary claim, in the amount of \$900.00, which includes \$800.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to keep the \$900.00 security/pet damage deposit they are currently holding in full satisfaction of the monetary claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 22, 2017

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Residential Tenancy Branch