



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Countess Gardens Inc. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD MNR

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on November 4, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed.

The Landlord was represented at the hearing by two agents, collectively referred to as the "Landlord". One of the Tenants attended the hearing. Both parties confirmed receipt of each other's documentary evidence. Neither party took issue with the service of this evidence or with service of the Notice of Dispute Resolution Proceeding.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to 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(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

### Background and Evidence

Both parties agreed that rent, at the end of the tenancy was \$986.00, and was due on the first of the month. Both parties also agreed that the Tenants moved out on July 15, 2019, and the move-out inspection was done on July 16, 2019; the tenancy started in February 2017. The Landlords confirm that they still hold a security deposit in the amount of \$462.00.

The Landlord stated that the Tenant provided notice on June 12, 2019, stating that she would be moving out at the end of June 2019. They signed a mutual agreement (provided into evidence) on June 17, 2019. This agreement specifies that both parties agreed to end the tenancy on July 15, 2019.

During the hearing the Landlord was asked to explain what they were seeking, and why. The Landlord explained that they are seeking \$686.00 in overdue rent, which accumulated over the course of the tenancy. The Landlord explained that the Tenant would pay partial payments, on inconsistent dates. The Landlord uploaded a copy of the payments the Tenant made over the duration of the tenancy. The Landlord is also seeking \$493.00, which is half month's rent for the remainder of July 2019, since the Tenant failed to give proper notice. The Landlord feels the Tenant ought to be responsible for the last half of July because of her short notice.

The Tenant stated that she signed a mutual agreement to end tenancy with the Landlord, and they both agreed to end the tenancy on July 15, 2019. As such, the Tenant feels she should not be liable for rent past this date. Further, the Tenant stated that she is unaware of any rent outstanding (dating back over the duration of the tenancy). The Tenant stated she paid all her rent, and she does not owe this amount as the Landlord is alleging.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

First, I turn to the Landlord's claim for rent from July 16 – July 31, 2019, the half month's rent after the Tenant moved out. Generally speaking, when a tenancy is month-to-month, the Tenants are required to give at least one month's notice to end the tenancy. In this case, I note the Tenant tried to give notice on June 12, in order to move out by the end of June 2019. However, despite all of that, the Landlord chose to enter into a mutual agreement to end tenancy on June 17, 2019. Neither party was required to enter into this mutual agreement to end tenancy. However, both parties signed this document.

Given that this mutual agreement was signed, effective July 15, 2019, I find the Tenant is not liable for any short notice they had given prior to the mutual agreement being signed. Further, I do not find the Tenant is responsible for rent past this date. The Landlord chose to sign a mutual agreement to end tenancy to end the tenancy on mutually acceptable terms. This was done after the Tenant gave notice on June 12, 2019 that she wanted to move out. I find the mutual agreement supersedes the Tenant's previous notice. I dismiss the Landlords' request for compensation for July 16-31, 2019.

With respect to the Landlords' claim to recover past due rent that had accumulated over the duration of the tenancy, I find the Landlords have failed to sufficiently demonstrate what is owed. In making this determination, I note the Landlords provided a blank monetary order worksheet and no rent-schedule (showing how much rent was for each month over the 2.5 years). I acknowledge the Landlords provided a list of rent payments made by the Tenant. However, this spreadsheet shows varying rent amounts, paid on varying dates, over an extended period of time. It is difficult to know, with any certainty, what rent was due each month.

The onus is on the Landlord to explain what monthly rent was each month, which payments were missed, what the outstanding balance was at that time, and cumulatively. I do not find the Landlords' list of payments received is sufficient to provide a full picture of all of the details. I further note the Landlords did not provide any direct statements in the hearing with respect to which months, specifically, were unpaid, or partially paid. I note the Landlords stated they issued a few 10 Day Notices to End Tenancy for Unpaid rent over the years, but they did not provide copies of these. Ultimately, I find the Landlords have failed to sufficiently substantiate what is owed, and how it was calculated. As such, I dismiss the Landlords application, in full, without leave.

I note the Landlords hold a security deposit in the amount of \$462.00. Since their claim against the security deposit was unsuccessful. I order this amount to be returned to the Tenant in full.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$462.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that 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: November 04, 2019

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Residential Tenancy Branch