



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes:

MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover unpaid rent / loss of revenue purportedly because the tenant did not provide Notice to vacate according to the Act, and for damages to the unit associated with the end of the tenancy, inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amounts claimed for carpet cleaning, window cleaning and the application fee?

### Background and Evidence

The following is undisputed. The tenancy began on August 01, 2008 and ended October 02, 2010. Rent in the amount of \$1565 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$775 and a pet damage deposit in the amount of \$400.

The landlord received tenant's written notice to vacate on September 01, 2010, for the tenant to vacate the rental unit September 30, 2010 (Oct 1, 2010). The landlord identified the tenant's one (1) day late notice, as late notice.

On October 02, 2010 the parties mutually attended to a move out inspection of the suite but there was no agreement as to the administration of the tenant's deposits. The landlord identified that carpets were unclean and required two cleaning sessions due to staining, at a cost of \$179.20 - for which the landlord provided an invoice and confirmation within the tenancy agreement for carpet cleaning at end of tenancy. The landlord also determined that windows were not clean and required cleaning at an invoiced cost of \$56.

The landlord testified that they advertise daily in the major City newspapers to rent a quantum of rental units on the same residential property (320) owned by the landlord and for specifically during the month of September 2010 the landlord provided invoices that they advertised daily in these same newspapers at a cost of \$131.78 per day. The tenant claims they showed the rental unit approximately 15 times during the month of September 2010, amongst others for rent in the same residential property – a high-rise tower. The landlord testified that "nobody liked it", and there was, "no interest in it". Consequently, the unit was not re-rented during the month of October 2010.

The landlord seeks loss of revenue for October 2010 in the amount of \$1565, as well as carpet cleaning and window cleaning in the sum of \$235.20

### **Analysis**

Based on the testimony of the landlord, and on the preponderance of all the evidence before me, I find that while the Act requires tenants to give *one full month's notice* that they are vacating as prescribed in the Act, the Act does not attach a penalty for failing to do so or automatically entitles the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, Section 7 of the Act does provide as follows:

#### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(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.

In this case, the tenant provided late notice by one (1) day. The landlord may well have made reasonable efforts to minimize their losses by advertising the rental unit as part of their global ongoing advertising, thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss resulted from the tenant's failure to comply with the Act. Rather, the landlord testified that despite showing the suite at least fifteen times in September 2010, their loss resulted from a lack of tenants interested in this rental property. On a balance of probabilities, I find that had the tenant submitted their Notice to end one day earlier in compliance with the Act the outcome would not have been altered. As a result, the portion of the landlord's claim for loss of revenue for October 2010 **is dismissed**, without leave to reapply.

The landlord is entitled to the cost for carpet cleaning and window cleaning in the amount of **\$235.20**. The landlord is also entitled to partial recovery of their filing fee in the amount of **\$25**, for a total entitlement of **\$\$260.20**.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the entire security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been partially dismissed without leave to reapply it is appropriate that I order the balance of the tenant's security deposit and pet damage deposit with interest returned to the tenant.

**I order** that the landlord retain \$260.20 from the deposits and interest of \$1183.42 held by the landlord, and I grant the tenant an order under Section 67 of the Act for the balance due of **\$923.20**.

**Conclusion**

The tenant is being given a Monetary Order in the amount of **\$923.20**. If necessary, this order may be filed in the Small Claims Court and 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*.