



# 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 dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation, or tenancy agreement, by ending their tenancy in breach of section 45 of the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on May 1, 2010 and switched to a month to month tenancy after April 30, 2011. Rent was payable on the 30<sup>th</sup> of each month in the amount of \$1,200.00 and on May 1, 2010 the Tenants paid \$600.00 as the security deposit. Both parties attended the move in inspection on April 23, 2010 and the move out inspection on January 15, 2012.

The Landlord affirmed that on December 15, 2011, she received the Tenants' notice to end their tenancy and that she told the Tenants she would attempt to re-rent the unit as soon as possible. She stated that she informed the Tenants of the rules whereby if she was not able to re-rent the unit for January, 2012 that they would be responsible for the full month's rent for January. She even attempted to re-rent the unit as of January 1,

2012 as the Tenants told her they could move out quickly but was not able to re-rent it until February 1, 2012.

The Tenant affirmed that on December 15, 2011, he personally served the Landlord with written notice to end his tenancy effective January 15, 2012 and at no time did the Landlord tell them they had to pay for the full month's rent for January 2012. He confirmed that they only paid \$600.00 for January 2012 rent and that they had completely vacated the unit as of January 15, 2012. He is of the belief that he had a verbal mutual agreement with the Landlord to allow them to end their tenancy mid month and not to have to pay rent after January 15, 2012.

The Landlord stated that they did not have a mutual agreement to end the tenancy January 15, 2012; rather she states she was very clear with the Tenants about their responsibility to have to pay rent for the full month if their unit was not re-rented.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45 (1) of the Act provides 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 that rent is payable under the tenancy agreement.

The Tenants allege they had a verbal mutual agreement to end their tenancy January 15, 2012, which was disputed by the Landlord. In the absence of documented proof and in the presence of disputed testimony, I find there to be insufficient evidence to prove the parties had a mutual agreement to end this tenancy; therefore, the parties are bound by section 45(1) of the Act, as listed above.

Based on the aforementioned, the Tenants' notice to end their tenancy which was served to the Landlord, December 15, 2011, would end their tenancy as of the end of January 2012. Therefore, I find by vacating the property January 15, 2012, the Tenants have ended their tenancy in breach of section 45(1) of the Act.

The Tenants paid only one half of a month's rent (\$600.00) for January 2012, which caused the Landlord to lose \$600.00 of rental income for the month of January 2012. I find the Landlord did what was reasonable to mitigate her loss by attempting to re-rent the unit as soon as possible.

Based on the aforementioned I find the Landlord has met the test for damage or loss, as listed above, and I hereby award her \$600.00 for loss of rent for January 2012.

The Landlord has been successful with her application, therefore I award her recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord's claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit as follows:

Loss of rent for January 2012	\$600.00
Recovery of filing fee	<u>50.00</u>
<b>Subtotal</b>	<b>\$650.00</b>
<b>LESS: Security Deposit \$600.00 + Interest of \$0.00</b>	<u>\$600.00</u>
<b>TOTAL OFFSET AMOUNT DUE TO LANDLORD</b>	<b><u>\$ 50.00</u></b>

### Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$50.00**. This Order is legally binding and must be served upon each Tenant.

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: February 14, 2012.

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Residential Tenancy Branch