



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MNDC

### **Introduction**

This hearing dealt with an application from the tenant for a monetary order in compensation for rent collected for the month following the month during which the landlord evicted the tenant. The tenant participated in the hearing and gave affirmed testimony. Despite being served in person and by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

### **Issue to be Decided**

- Whether the tenant is entitled to a monetary order under the Act

### **Background and Evidence**

There is no written residential tenancy agreement in place for this month-to-month tenancy which began on or about January 1, 2008. Three tenants occupied the unit and the applicant's monthly share of rent was \$400.00, which was due at the start of each month. The tenant paid a security deposit of \$200.00 at the outset of tenancy.

As a result of the landlord's concern about the conduct of the tenants, an agent of the landlord attended the unit approximately mid-way through February 2009, and verbally instructed the tenants to vacate the unit. The tenant vacated the unit by February 28, 2009. Subsequently, the landlord cashed the rent cheque for \$400.00 which was issued to the landlord on the tenant's behalf by the Ministry of Employment and Income Assistance ("Ministry").

Neither a move-in condition inspection and report, nor a move-out condition and inspection report were completed.

## **Analysis**

Section 44 of the Act broadly addresses **How a tenancy ends**, and provides in part as follows:

44(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(iii) section 47 [*landlord's notice: cause*];

In view of the undisputed testimony of the tenant, it appears that the landlord evicted the tenant on the basis of his conclusion that he had cause. Related to this section 47 of the Act addresses **Landlord's notice: cause**. Specifically, section 47(2) & (3) provide as follows:

47(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) 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.

(3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the Act speaks to **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Based on the undisputed testimony of the tenant, I find that the landlord failed to comply with the above statutory provisions. Accordingly, I find that as proper notice was not given, the landlord is not entitled to rent collected in the amount of \$400.00 for March when the tenant was no longer residing in the unit. I find therefore that the tenant is entitled to a monetary order in the amount of \$400.00, and I order the landlord to make direct payment of same FORTHWITH to the tenant.

In relation to the tenant's inquiry about the security deposit, which he stated has not been repaid to him by the landlord, section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In particular, section 38(1) provides:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The option remains available to the tenant of informing the landlord in writing of his forwarding address and requesting that the landlord return the security deposit.

### **Conclusion**

I hereby grant the tenant a monetary order under section 67 of the Act for **\$400.00**.

This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 27, 2009

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Dispute Resolution Officer