

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

MNDC, MNR, FF

### **Introduction**

This hearing was convened in response to an application filed by the tenant and an application filed by the landlord.

The tenant sought a monetary order for:

- money owed or compensation for damage or loss under the Residential Tenancy Act (the Act), regulation or tenancy agreement (\$3900)
- recovery of the filing fee from the landlord for this application in amount of \$50

The landlord sought a monetary order for:

- unpaid rent or utilities / loss of revenue (\$1200 for February 2009)
- recovery of the filing fee from the landlord for this application in amount of \$50

Both parties were represented in the conference call and each was given an opportunity to participate in the hearing, and each provided submissions and affirmed testimony to this hearing.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

Undisputed testimony in this matter is that the tenancy began October 01, 2007 as a month to month tenancy of a furnished rental unit. During the tenancy the monthly rent payable by the tenancy agreement was \$1150 per month beginning on the 1<sup>st</sup> of October 2007 establishing the payable due date of the rent as the 1<sup>st</sup> of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$575 – which was settled to the satisfaction of the parties after the tenancy ended.

It is further undisputed that on January 12, 2009 the tenant gave the landlord written notice that he was moving out by month's end. The notice submitted into evidence explains the tenant is ending the tenancy because his, "accommodation needs have evolved", and, as "another situation has made itself available immediately", the tenant stated he planned to move before the end of January (2009). The notice goes on to state that the tenant would honour their obligation for February 2009, but that it would be appreciated if the landlord could re-rent it out, "earlier or even for February 1<sup>st</sup>", (2009).

The LANDLORD testified that although not obligated or compelled by the tenant's improper notice ending the tenancy, to immediately turn her mind to re-renting the suite (and, in part as the tenant assured her he would honour paying February's rent) she and the tenant have, "always had a good relationship", and therefore, she did not hesitate to act on the tenant's request as soon as possible. The landlord testified that in spite of her efforts, at some cost, and fielding interest in the suite, she was unable to re-rent the suite for February 01, 2009; but, with ongoing efforts was able to rent it out for March 01, 2009. It is undisputed that the tenant gave the landlord a rent cheque for the month of February 2009, as stated in his notice to end the tenancy. However, the landlord submitted that she then learned in the first week of February the tenant had placed a stop payment on the February cheque. Unable to rent the suite for February 2009, the landlord determined to seek loss of revenue for up to the date the tenant's notice took legal effect: February 28, 2009.

The TENANT testified that, in his determination, the landlord did not choose to advertise the suite properly, or in a manner that might have optimized the chances of renting the

suite by February 01, 2009. The tenant submitted information to bolster his assessment that in the rental climate of the time, the landlord's advertising efforts did not target a larger pool, or the appropriate pool of tenant candidates; and, had she done so, there existed a likelihood of success in re-renting the suite within the remaining two weeks of January 2009. In spite of his unconditional statement to honour the rent for February, the tenant submits he does not think he should be responsible for loss of revenue of February 2009 rent because of the landlord's choices and therefore disputes the landlord's claim.

The tenant also disputes an alleged illegal rent increase of \$50 per month. The tenant alleges that beginning May 01, 2009 the rent increased from \$1150 to \$1200, without proper notice, and not within the legislative guidelines of the Act. The tenant's testimony is that following a conversation with the landlord in respect to his girlfriend, the tenant, without demand, oral or written from the landlord, determined to pay the landlord an additional \$50 per month. The tenant's testimony is that, to his thinking, this is what was required to, "avoid confrontation". The landlord denies that she set out to increase the rent, or requested an increase in rent, or demanded an increase in rent or in any way coerced the tenant or threatened the viability of the tenancy if the tenant did not pay additional rent. The landlord testified the tenant offered to pay an additional \$50 per month to offset any concerns of additional costs by his girlfriend. The parties do not dispute that this was done by the tenant of his own volition and of his own determination and as to the amount. The landlord's testimony is that the rent did not alter from the amount of the tenancy agreement and neither did she raise the rent when legally in a position to do so. The tenant seeks a return of \$450, representing the nine (9) months in which he paid the landlord an extra \$50 per month.

The tenant also claims that during the fifteen month tenancy he determined that in the tenant's absence, the landlord entered his suite without notice to him in excess of a dozen times. The tenant's testimony is that proof to him of the breach was that on leaving the suite he would routinely only lock the deadbolt. However, on the subject dozen times, he found the handle lock mechanism and the deadbolt were both locked, indicating to the tenant that the landlord had entered. The landlord denied ever entering

the suite unless she first obtained the tenant's permission or gave proper notice for entry. It is undisputed by both parties, that at no time did the tenant ever confront or otherwise notify the landlord of his suspicion, or evidence the suite was being entered by the landlord without proper notice. The landlord acknowledged that on the tenant's permission, and for the tenant's benefit, to accommodate re-renting the suite as soon as possible, she entered the suite to ensure the suite's readiness for potential showings between January 15 and January 25, 2009. The tenant denies giving such permission. Therefore, the tenant is seeking \$3450 (3 month's rent) for the alleged breach.

### **Analysis**

I have reviewed all submissions and reflected on all the testimony and claims of the parties, and given full regard to all the evidence before me.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss.

Simply stated, the claimant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify

the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

As to the tenant's claims:

The tenant submits he was forced to pay an illegal rent increase of \$50 per month, for 9 months, and did not determine to attempt to rectify the alleged illegality, or dispute it until now.

On the preponderance of the evidence and on the balance of probabilities **I do not find** the tenant was levied a rent increase. I prefer the landlord's evidence and the testimony of the tenant that the \$50 per month was paid to the landlord by mutual agreement, and not as part of the rent.

The legal principle of *laches* is based on the concept that equity aids the vigilant and not those who slumber on their rights. In this case, I find that the tenant ought to have diligently asserted his right or claim of being illegally exploited by making an application for dispute resolution during his tenancy to address this issue. In failing to address the issue or make an application at or near to the time the issue arose, the tenant did not allow the landlord to respond effectively to the tenant's claims. In the absence of evidence to support the tenant's claim, and on the basis of *laches*, I dismiss this portion of the tenant's application without leave to reapply.

**I find** the tenant's claim, that the landlord breached the tenant's right to quiet enjoyment by entering his suite without proper notice to the tenant, does not meet the test for damages and loss. Again, the principle of *laches* applies in this portion of the tenant's application, as well. If the tenant was convinced of the landlord's breach, the tenant ought to have made an effort to address the problem or made application for dispute resolution during his tenancy to address this issue. Further, at no time did the tenant attempt to correct the situation, verbally or by written notice to the landlord, within a reasonable time of any of the alleged "dozen" breaches. Therefore, I dismiss this portion of the tenant's application without leave to reapply.

## As to the landlord's Claim

**Section 45** of the Act states:

### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

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

(b) is 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.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is 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) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

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

It is not disputed the tenant gave insufficient notice to end the tenancy. The tenant gave a notice to end the tenancy earlier (less) than one month from, [45(1)(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* (December 31, 2008). None the less, the landlord, in turn, quickly acted on the tenant's notice, and in apparent good faith, attempted to re-rent the suite as soon as possible, even though not legally obligated to do so for a date earlier than the date following the date that the notice takes legal effect (February 28, 2009).

On the preponderance of the evidence, and in spite of the tenant's unconditional statement to pay the landlord rent for February 2009, **I find** the landlord quickly went about seeking a new tenancy after the tenant gave notice to end the tenancy. **I find** the landlord has demonstrated she took reasonable steps to address the situation and mitigate the losses that were incurred. In this regard, the landlord's claim for loss of revenue for the month of February 2009 meets the test for damage and loss claims.

**I find** the landlord is entitled to loss of revenue of rent for the month of February 2009 in the amount of **\$1150**.

As the landlord's application has merit, the landlord is also entitled to recovery of the filing fee in the amount of **\$50**. The quantum of the landlord's entitlement is **\$1200**.

### **Conclusion**

**I dismiss** the tenant's application without leave to reapply.

**I am granting** the landlord a Monetary Order under Section 67 of the Act in the amount of **\$1200**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 30 , 2009