



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNR, MNDC, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for money owed of compensation for damage or loss; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue and for costs associated to advertising the rental unit as a result of the Tenants not moving into the rental unit, and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord and the Tenant agree that the Tenant completed an Application for Tenancy for the rental unit on March 25, 2010, at which time they both understood that the tenancy was to begin on April 03, 2010 or April 04, 2010, and that the rent would be \$1,595.00 per month. The Application stipulates that the Applicant will be liable for the payment of the equivalent of one month's rent and any related expenses incurred by the Landlord if the Applicant fails to take possession of the rental unit or sign a tenancy agreement for the rental unit once the offer is accepted. The section which specifies the expiry date of the offer is blank.

The Agent for the Landlord stated that she signed the Application for Tenancy on April 01, 2010, which indicated that the Tenant had been accepted as a tenant; she stated

that she entered the intended start date of the tenancy, which was April 15, 2010, on the Application for Tenancy on April 01, 2010; that she did not advise the Tenant of the proposed start date until April 13, 2010; and that she did not give the Tenant a copy of the accepted Application for Tenancy until she served her with evidence for this hearing.

The Agent for the Landlord and the Tenant agree that the rental unit was being renovated and was not ready for occupation by April 04, 2010; that they spoke on March 31, 2010 at which time the Agent for the Landlord advised the Tenant that the rental unit would not be ready for April 04, 2010; that they spoke on April 07, 2010 at which time the Agent for the Landlord advised the Tenant that the rental unit would likely be ready for April 09, 2010 and the Tenant agreed to start the tenancy on that date; that the rental unit was not ready for occupancy on April 09, 2010; and that they spoke on April 12, 2010 at which time the Agent for the Landlord advised the Tenant that the rental unit would likely be ready for April 15, 2010 and the Tenant agreed to start the tenancy on that date.

The Tenant stated that she drove by the rental unit on April 14, 2010 and noticed that the carpet still had not been installed in the lower bedroom. She stated that she was living in a hotel at this point; that she did not wish to incur additional expenses related to further delays with the occupancy date; that she made arrangements to move into a different rental unit; and that on April 14, 2010 she advised the Landlord that she no longer wished to move into the rental unit.

The Agent for the Landlord stated that all of the renovations were completed, that the carpet had been installed in the lower bedroom on April 12, 2010, and that the rental unit was ready for occupancy on April 13, 2010. The Witness for the Landlord stated that he was the contractor in charge of completing the renovations; that he was working on the rental unit during the evening and on weekends; and that he does not know when the carpet was finally installed in the lower bedroom.

The Landlord submitted a copy of an email sent to the Agent for the Landlord from the Landlord, which is dated April 13, 2010. In this email, which the Landlord appears to have dated April 14, 2010, the Landlord thanks the Agent for the Landlord for informing her that the carpet had not been installed by April 13, 2010. Upon reviewing this email the Agent for the Landlord acknowledged that the carpet may not have been installed by April 12, 2010.

The Landlord submitted a copy of an email sent to a variety of people from the Agent for the Landlord, which is dated April 12, 2010. In this email, the Agent for the Landlord indicates there has been a miscommunication regarding the carpet in the lower bedroom and that the contractor will be attempting to make arrangements to have carpet installed.

The Landlord is seeking the equivalent of one month's rent, which is \$1,595.00, as compensation for not taking occupancy of the rental unit as stipulated in the Application for Tenancy. The Landlord is seeking the advertising costs of \$686.94 and credit check

costs of \$44.75, which are costs associated to the necessity of finding new tenants due to the fact that the Tenant did not taking occupancy of the rental unit.

### Analysis

I find that the Landlord and the Tenant indicated an interest in entering into a tenancy agreement for a tenancy that was to begin on April 03, 2010 or April 04, 2010. I find that the tenancy did not begin on that date because renovations to the rental unit were not complete by that date.

I find that on April 07, 2010 the Landlord and the Tenant entered into a verbal tenancy agreement for a tenancy that was to begin on April 09, 2010. I find that the tenancy did not begin on that date because renovations to the rental unit were not complete by that date.

I find that on April 12, 2010 the Landlord and the Tenant entered into a verbal tenancy agreement for a tenancy that was to begin on April 15, 2010. I find that on April 14, 2010 the Tenant verbally advised the Landlord that she did not intend to move into the rental unit on April 15, 2010 because the renovations were still not complete and she did not believe that the rental unit would be ready for occupancy by April 15, 2010.

I find, on the balance of probabilities, that the renovations to the rental unit were not complete by April 14, 2010. In reaching this conclusion, I was heavily influenced by the evidence of the Tenant, who I found to be a forthright and credible witness, who stated that she looked into the rental unit on April 14, 2010 and determined that the carpet had still not been installed in the lower bedroom.

I favor this testimony of the Tenant over the testimony of the Agent for the Landlord, who stated that the carpet had been installed in the lower bedroom by April 12, 2010, for the following reasons:

- The Landlord provided no documentary evidence, such as a receipt for installing the carpet which should have been readily available, to corroborate the Agent's testimony
- The contractor for the renovations, who appeared as a witness, was unable to state when carpet was installed in the lower bedroom
- An email, dated April 12, 2010, confirms that arrangements for purchasing and installing the carpet had not been made by the morning of April 12, 2010
- The Landlord indicated in an email, dated April 13, 2010, that the Tenant cannot move in on April 13, 2010 because the carpet had not been installed by that date
- After she had the opportunity to review the email from April 13, 2010, the Agent for the Landlord acknowledged that her testimony regarding the installation date may have been inaccurate.

Given the history of renovation delays and the fact that the carpet had not been installed by April 14, 2010, I find it was reasonable for the Tenant to conclude that she would not

be able to move into the rental unit on April 15, 2010. I find that the Landlord had failed to comply with the terms of at least one previous verbal agreement; that the Tenant reasonably concluded that the Landlord was going to fail to comply with the terms of their most recent verbal agreement; and that it was reasonable and responsible of the Tenant to find alternate accommodations in an attempt to mitigate any further expenses she incurred from living in a hotel. As the actions of the Landlord significantly contributed to the failure of this tenancy, I find that the Landlord is not entitled to compensation for any losses they incurred as a result of the failed tenancy.

In determining this matter I gave no consideration to the clause in the Application for Tenancy, which stipulates that the Applicant will be liable for the payment of the equivalent of one month's rent and any related expenses incurred by the Landlord if the Applicant fails to take possession of the rental unit or fails to sign a tenancy agreement for the rental unit once the offer is accepted. I find that the Application for Tenancy constitutes an expression of interest in entering into a tenancy agreement. It does not constitute a verbal agreement to enter into a tenancy agreement, as both parties had not expressed consent to enter into a tenancy at the time the application was signed.

I find that the Application for Tenancy is a collateral contract and that I have no authority to enforce the terms of this contract. There is nothing in the *Act* that requires a tenant to take possession of a rental unit until the parties have entered into a tenancy agreement. There is nothing in the *Act* that penalizes a tenant for failing to sign a tenancy agreement. I find that this clause in the Application for Tenancy is an attempt to contract out of the *Act*, which contravenes section 5(1) of the *Act*. I find that neither party is compelled to comply with the terms of the *Act* until they enter into a verbal or written tenancy agreement.

### Conclusion

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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: August 12, 2010.

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Dispute Resolution Officer