



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes MNDC, MNSD, OPT, AS, FF

### Introduction

This matter dealt with an application by the tenant for a Monetary Order for money owed or compensation for loss or damage under the Residential Tenancy Act (Act), regulations or tenancy agreement, an Order for the return of her security deposit and to recover the filing fee for this application. The tenant filed an amendment to her application to include an Order of Possession and an Order to allow the tenant to assign or sublet because the landlords' permission has been unreasonably withheld. At the outset of the hearing the tenant withdrew these sections of her amended application. This hearing dealt with two applications from the tenant and I have recorded my decision for each application separately.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent by registered mail to the landlord. The landlord confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to the return of her security deposit?



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Background and Evidence

This tenancy started on May 01, 2008. The rent for this unit was \$800.00 per month and was due on the first of each month. The tenant paid a security deposit of \$400.00 on May 01, 2008. The tenant did not reside in the unit but sublet it with the landlords' permission. The tenant rented another unit in this building from the landlord and sublet this unit also. Both applications filed by the tenant and dealt with at this hearing covered similar issues.

The tenant states the landlord ended her tenancy for this unit on March 30, 2010. The tenant states she was out of the country when she received a phone call from the landlord saying it was in the tenants' best interests to end the tenancies. The tenant states she did not agree, during this phone call, to end her tenancies but told the landlord she would get back to her on her return. The tenant states when she returned from her trip she found the landlord had ended the tenancy for this unit and her furniture had been removed from the rental unit and stored in a covered car area. The tenant states she had a six month sublease with this tenant and has lost rental income because the landlord ended her tenancy without Notice to do so.

The landlord states the tenant agreed to end the tenancies for both her units after she called her at the end of March, 2010. The landlord states she did tell the tenant that it would be in her best interests to end her tenancy as she had received complaints about her from her subtenant and they had had difficulties with other subtenants' behaviour in the past. The landlord states the tenant did not honour her tenancy agreement with this subtenant and he came to her to deal with some of their issues. The landlord states the tenant agreed to give up this tenancy at the end of March, 2010 and the landlord states the subtenant then continued living in the unit under a new agreement with her as his landlord from April 01, 2010.

The landlords witness testifies that she heard a telephone conversation between the landlord and tenant because it was on speaker phone. She states she heard the tenant agree to end the tenancies. She states that this was a pleasant conversation between the landlord and tenant. She states the tenant said when the lease was up on unit 104 she would give up both units. The witness states the tenant agreed to give the units back to the landlord but stated she would get



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

back to the landlord when she knew the date that her lease was up with her subtenants in unit 104.

The landlords witness testifies that she saw the tenants' furniture stored in a locked covered area. She states there was not much furniture and she saw a man come to collect it. She states he said he was a friend of the tenant. The witness was asked to describe the condition of the tenants' furniture. She states it all seemed to be very old and in a very used condition.

The tenant cross exams this witness and asks her if she was asked or told by the landlord to end the tenancies. The witness replies you were asked to end the tenancies.

The tenant seeks compensation from the landlord for \$350.00 in moving expenses as she had to pay to have someone to come to remove her furniture from the stored area. The tenant seeks a loss of rental income of \$1,600.00 as she had a remaining four months on her lease with her subtenant and the difference between her rent and the rent she collected was \$400.00 per month. The tenant seeks to recover from the landlord her storage costs. She claims she paid \$450.00 to store her furniture for four months but she states she does not have a receipt for this cost. The tenant seeks to recover \$400.00 for the couch which she claims was damaged because the landlord stored it outside and it became wet and stained. The tenant states the couch was two years old and states she only seeks to recover \$400.00 as the couch was used.

The tenant states the landlord did not return her security deposit of \$400.00 at the end of the tenancy and the landlord had her address since the start of the tenancy.

The tenant seeks to recover her \$50.00 filing fee for this application.

The landlord disputes the tenants claim for moving expenses as she states the tenant agreed to end the tenancy and therefore the landlord should not be held responsible for her costs. The landlord also claims as there was very little furniture that she finds the tenants costs of \$350.00 to be excessive. The landlord also disputes the tenants claim for a loss of income as she states



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

the tenant agreed to end the tenancy therefore the landlord should not be responsible for any loss of rental income after this time.

The landlord disputes the tenants claim for damage to her couch. The landlord states she did not remove the tenants' furniture from her unit. Her subtenant removed the furniture as he was disgusted with the condition of the furniture left in the unit by this tenant (his landlord). The landlord states she removed it to the covered garage area to store it for the tenant until she returned from her trip. The landlord states she is not responsible to pay for the tenants' storage costs as again the tenant agreed to end the tenancy at this time and therefore the storage of her furniture is her responsibility. The landlord agrees she has not returned the tenants security deposit and this was an oversight by her.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. In this matter the landlord states the tenant did agree to end the tenancy and would check when the lease expired on the other unit rented by her. The landlord also states that the tenant said she would get back to her when she confirmed when this other lease would end but the tenant failed to do so. The tenant argues that she did not agree to end the tenancy.

When one Party's evidence is contradicted by the other Party the burden of proof falls on the person making the claim to provide corroborating evidence to support her claim. In this instance the landlord has provided a witness who heard the conversation between the two Parties over the speaker phone. However, the landlords her witness confirms that the tenant stated that she would end the tenancies when the lease ended on the other unit. Therefore I find the tenancy for this unit should not have ended on March 31, 2010 as other lease on the other unit (104) did not end until June 30, 2010. Therefore, I find the agreement was that the tenancy would end on June 30, 2010 for both units.

Residential Tenancy Branch  
Ministry of Housing and Social Development

Consequently, it is my decision that a verbal agreement was in place to end the tenancy on June 30, 2010. Therefore, I find the tenant has established her claim for a loss of rental income of **\$1,600.00** pursuant to s.67 of the Act for the four remaining months that this tenancy should have continued before the tenant agreed it would end.

I find the tenant has not established her claim for moving costs as the tenant would have had to pay to remove her furniture when the tenancy should have ended and therefore would have incurred similar costs at this time. Therefore, I dismiss her application for moving costs of \$350.00.

I find the tenant has not established her claim for damage to her couch as she has provided no evidence to support her claim that the landlord acted in a negligent manner or that it was the landlord who removed her furniture from the unit. I further find the tenant has provided no evidence to support her claim for storage costs of \$450.00 to store her furniture.

The landlord has agreed that she forgot to return the tenants' security deposit at the end of the tenancy and I find therefore that the tenant is entitled to a Monetary Order to recover the security deposit of \$400.00 plus accrued interest of \$4.02 to a total amount of **\$404.02** pursuant to s. 38 of the Act.

As the tenant has been partially successful with her claim I find she is entitled to recover her **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the tenant for following amount:

Loss of rental income	\$1,600.00
Filing fee	\$50.00
Total amount due to the tenant	\$2,054.02

## Conclusion



# Dispute Resolution Services

Page: 6

Residential Tenancy Branch  
Ministry of Housing and Social Development

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,054.02**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

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: October 27, 2010.

---

Dispute Resolution Officer