



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

**Dispute Codes:** *MNSD, MND, MNDC, FF.*

## **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cost of painting and the filing fee. The tenant applied for a monetary order for the return of double her security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

## **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income; cost to paint the unit and the filing fee? Is the tenant entitled to the return of double the security deposit?

## **Background and Evidence**

On August 01, 2009, the tenant entered into a month to month tenancy agreement with the landlord. The monthly rent at the time the tenancy ended was \$850.00 due on the first of the month. The tenant paid a security deposit of \$425.00.

The tenant stated that she needed a larger unit and when one came available in the building complex, she approached the landlord with a request to move to this unit. In early May, the landlord showed the unit to the tenant and she agreed to accept it. The tenant stated that she made a verbal agreement with the landlord to rent it June 01, but found out about a week later that he had rented it to someone else.

The landlord stated that he did not have an agreement with her to rent the larger unit. She did not put a deposit down on the unit, nor did she sign a tenancy agreement. Therefore when he found a tenant, he entered into an agreement with that tenant.

The tenant had family coming to live with her and therefore needed the extra space. When she found out that she was unable to rent the larger unit, she looked for and found one to suit her needs. On May 16, she gave the landlord written notice to end the tenancy effective May 31, 2010. She stated that since he knew that she intended moving to a larger suite, she felt it was unnecessary to provide notice in writing prior to the first of the month.

The tenant stated that on May 31, she met the landlord inside the unit, handed over the keys to him and gave him her forwarding address in writing. Both parties conducted a visual inspection and the landlord did not report any problems. The landlord agreed that they met on May 31 inside the rental unit and that the tenant handed over the keys and provided him with her forwarding address. He stated that he did not notice the marks on the walls until two days later and incurred a cost of \$750.00 to repaint the unit. Both parties disagreed on whether the unit was painted prior to the start of the tenancy. The landlord stated that he painted the unit after the tenant moved in and the tenant stated that he did some touch ups. The landlord did not conduct a move in inspection.

The landlord stated that he advertised the availability of the unit but was unable to find a tenant for the following month and a half. The landlord is claiming a total of \$2,025.00 which includes rent for June (\$850.00), rent for half of July (\$425.00) and for the cost of painting (\$750.00). The landlord provided receipts for painting dated June 30, 2010.

### **Analysis**

#### **Landlord's application:**

Section 45 of the *Residential Tenancy Act*, states 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.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of June.

The landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Based on the testimony of the landlord I find that he attempted to mitigate his losses. Accordingly, I find that the landlord is entitled to **\$850.00**, which is the loss that he suffered.

The landlord is not entitled to the loss of income he incurred for July as the tenant could have legally ended the tenancy effective June 30, 2010 upon giving the landlord notice to end the tenancy, as she did on May 16, 2010. Therefore the landlord is not entitled to the loss of income that he incurred for July 2010.

The landlord has also made a claim for \$750.00 for painting the unit. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord stated that the unit was painted prior to the start of the tenancy. The tenant denied this and stated that it was touched up in places after she moved in. The landlord did not have any evidence to support the condition of the walls at the start of tenancy. In addition, on the day the tenant returned the keys, he did not indicate to the tenant that there was damage to the walls.

For the above reasons, I find that the landlord has not proven his claim for the cost of painting and therefore his claim for \$750.00 is dismissed. Overall the landlord has established a claim for **\$850.00**.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit. The landlord currently holds a security deposit of \$425.00 and is obligated under section 38 to return double this amount.

Therefore, the tenant has established a claim for **\$850.00**.

### **Conclusion**

Overall the landlord has established a claim of **\$850.00** and the tenant has established a claim for **\$850.00**. I will use the offsetting provisions of section 72 of the *Act* to offset the landlord's claim against the tenant's claim, both being in equal amounts. Both parties must bear the cost of filing their own application.

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: November 09, 2010.

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Dispute Resolution Officer