



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 20, 2010. The Tenant confirmed receipt of the hearing documents and the Landlord's evidence.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

1. Has the Tenant breached the Act?
2. If so, has the Landlord proven entitlement to a monetary order as a result of the Tenant's breach?
3. When did the Tenant's tenancy begin and end?

### Background and Evidence

The Landlord testified that he entered into a verbal tenancy agreement with only the female Tenant named in this proceeding and she took possession of the rental unit

sometime around June 1, 2009. The Landlord did not have records with him to provide an exact date of when the tenancy became effective. He stated rent was payable on the first of each month in the amount of \$3,300.00 and a security deposit of \$1,650.00 was paid sometime around June 1, 2009. He confirmed that he did not complete move-in or move-out inspection report forms however he stated he conducted a walkthrough of the rental unit with the female Tenant at the onset of the tenancy and with the male Tenant at the end of the tenancy.

The Landlord said that he received a telephone call from the male tenant sometime near the end of June 2010 advising him that there was no more money to pay rent and he would be moving out of the unit by June 30, 2010. He assisted the male tenant to move out near the end of June however he was not completely out until early July. It was not until July 10, 2010 when he considered the male tenant had vacated the unit as he assisted with the removal of debris and garbage that was left behind. The Landlord stated he is seeking to recover his expenses for removal of the debris, replacement of the damaged carpets and repair to other damages to the property. He is also seeking two months of lost rent and noted that he found \$12.37 in the rental unit that he believes to be the son's of the female Tenant.

Counsel for the Landlord referred to the photographic evidence submitted by the Landlord who confirmed the before photos were taken in approximately June 2009 and the after photos were taken in July 2010. They contend the damage to the unit is not normal wear and tear. The Landlord confirmed that he advertised the rental unit on local internet sites and a local news media in July 2010 for \$3,950.00 per month and it was re-rented for what he recalls as of September 1, 2010. The Landlord could not provide definitive testimony as to the effective date of the new tenancy however he was certain the unit was advertised for and rented for \$3,950.00 per month.

The Landlord described his relationship with the Tenants as knowing them through a common friend. He stated that he knew the female Tenant was dating the male. I asked when the Landlord first dealt with the male Tenant for any tenancy issues for

which the Landlord responded that he never dealt with the male Tenant. I then asked who paid the rent after February 2010 and initially the Landlord stated that his accountant looked after the rent payments and later added that the male Tenant provided some post dated cheques for rent payments and the Landlord knew that there were two cheques which remained un-cashed. The Landlord stated that he did not know how many months of rent were paid by the male Tenant. The Landlord stated he was not able to provide testimony as to how the post dated cheques from the male Tenant were received. As he continued on with his testimony I asked the Landlord if the June 2010 rent was paid and he advised that June 2010 rent was not paid and that he was seeking June and July 2010 rent payments. I then asked when the first time he dealt with the male Tenant was and he advised that it was when the male Tenant called him in June to say he was moving out. After further questioning the Landlord stated that his fiancée may have picked up the rent cheques from the male Tenant. The Landlord initially stated that his fiancée was not his agent and she did not normally conduct business on his behalf for his rental unit. He then elaborated on the relationship between his fiancée and the female Tenant stating that they have seen the male and female Tenants at different social gatherings as they have a common friend.

The Tenant testified that none of the Landlord's testimony was accurate. It was the Landlord's fiancée who first informed her that the rental unit was available and who conducted the first walk through with her. Later the Landlord and his fiancée showed her and her boyfriend (the male tenant) the house. She dealt primarily with the Landlord's fiancée and in fact she met the fiancée for coffee and gave her the security deposit in June 2009. The Landlord's dates were incorrect as the tenancy agreement did not take effect until July 1, 2009 and not June 1, 2009. The Landlord's evidence states that he did not know she had a dog which is not true. She used to walk dogs with the Landlord's fiancée and they knew from the beginning that she would be occupying the unit with her dog.

The Tenant advised that the Landlord and his fiancée were both at their friends 50<sup>th</sup> birthday party on January 30, 2010 and it was at this party that she informed both the

Landlord and his fiancée that she would be moving out of their rental unit. She told them both that she was awarded her house back in her recent divorce and she was going to move back into her previous home in February 2010. She stated that she told both the Landlord and his fiancée that the male Tenant would be continuing to rent the unit. She had completely vacated the rental unit and transferred all of the utility accounts out of her name by February 26, 2010.

She had left post dated cheques with the Landlord up to April 1, 2010 and the Landlord then acquired cheques from the male tenant starting with the May 1, 2010 rent. She stated that there was a self contained suite in the basement and that the male tenant had rented out the suite during the course of his tenancy. She argued that the Landlord's testimony was not correct because she was told the male tenant paid the June 2010 rent. She also stated that the male tenant called the Landlord near the end of June in an attempt to work things out but that the Landlord chose to evict him instead of working it out.

The Tenant stated that both the Landlord and his fiancée knew in advance that she was vacating the unit in February and in fact the fiancée knew as early as December 2009. She received a very angry message from the Landlord on her voice mail on June 30, 2010 advising her that he had met with the male tenant and something about the rent was not going to be paid. He requested her forwarding address for the security deposit so she sent him an email requesting it to be returned. She does not agree with his attempts to claim damage to the unit. It was always well maintained during her tenancy. She owns a large professional cleaning company and her staff would clean the rental unit on a weekly basis. There were no cigarette burns in the carpet and the only damage that was present was the hole in the wall which was caused by her children. She accepts responsibility for the cost to repair the wall and based on her estimates the repair would cost approximately \$200.00. The Tenant stated that these issues are between the Landlord and the male Tenant as her tenancy ended when she moved out in February 2010. The Landlord's fiancée even had a conversation with the male Tenant

in March 2010 and asked him what he thought about the female Tenant no longer residing there.

The Tenant requested that I take note of the items displayed in the photos provided in the Landlord's evidence as there were several photos of different areas that displayed the same items which indicates the Landlord simply moved the articles around to manipulate the photos and make it appear that there was debris left in every room. She pointed out how the bbq cover and carpet were on the deck where they were kept, and then another photo shows them on the roof.

The Tenant's advocated stated the Tenant provided the Landlord and his fiancée, his agent, with notice to end tenancy on January 30, 2010 at the birthday party. The Landlord and his fiancée knew this well in advance and knew that the female Tenant removed her name from all of the utility accounts. They are of the opinion the Landlord is simply going after the female Tenant because they think she is getting a large amount of money from her divorce settlement. The Landlord knows the male tenant has no money so he is going after the female Tenant to get money from her to remodel his house. The female Tenant owns a large successful professional cleaning company and the rental property was professionally cleaned by her staff on a weekly basis. She argued there were no written documents such as a tenancy agreement or inspection reports so how can the Landlord collect damages. It is clear to her that the Landlord moved the items around to frame the photos which she thought was clear but not clever.

The Landlord responded by stating neither him nor his fiancée were friends with either Tenant. He was clear that he rented only to the female Tenant. He was aware of her house settlement and claims he did not know she was moving out of his unit. He stated he felt sorry for the male Tenant and he did not evict him but rather he was helpful. When he attended the unit the female Tenant's cleaning crew was at the rental unit which indicates to him that the male Tenant was a tenant to the female and not to

him. The Landlord claims the male Tenant told him the debris that was left behind in the rental unit was the female Tenant's and not his.

In closing, the Landlord's counsel surmised the e-mail sent by the female Tenant to request the return of her security deposit is proof that the female Tenant was still considered a tenant. The female Tenant failed to provide the Landlord with written notice to end tenancy, in accordance with the Act. This prevented the Landlord from determining if he wanted to keep the male tenant on as a tenant and dealing with the security deposit. The photo evidence supports the Landlord's claim for damages for which they believe to be the responsibility of the female Tenant. If she did not believe she was still a tenant then the female Tenant should have provided the Landlord with the male Tenant's forwarding address when he requested an address to return the security deposit.

The Tenant's advocate stated that it was not the female Tenant's responsibility to provide the Landlord with the male tenant's forwarding address. She also wanted to make it clear that the Landlord had ample opportunity to conduct a move-in and move-out inspection report when the female Tenant moved in and out of the unit as well as when the male tenant vacated the unit and he failed to do so.

In closing the female Tenant confirmed her tenancy ended at the end of February 2010 when she vacated the unit. She confirmed she had made arrangements for the male tenant to keep the security deposit with the Landlord and that the male tenant was to pay her back in small payments, however that never happened. She believes the Landlord has submitted inflated invoices for the alleged damage to be repaired and she was insistent that none of the articles displayed in the photos were her possessions.

### Analysis

A significant factor in my considerations is the credibility of the evidence and testimony before me. I am required to consider them not on the basis of whether they "carried the

conviction of the truth”, but rather to assess them against the consistency with the probabilities that surround the preponderance of the conditions before me.

The Landlord initially stated that his fiancée did not act as his Agent; however there was overwhelming testimony that she was quite involved in aiding him as an Agent to his rental property. He was insistent that the tenancy agreement was between him and the female Tenant yet he was not able to provide testimony to the most standard terms of the tenancy such as the effective date of the tenancy and which post dated cheques were provided by the female Tenant.

In this case the evidence supports it was the Landlord who initially committed several breaches of the Act. The Landlord failed to provide a written tenancy agreement as required pursuant to section 13 of the Act. The Landlord then breached section 23 of the Act which requires a landlord to conduct a move-in inspection report with the tenant and provide a copy of the report to the tenant in accordance with the regulations. Therefore section 24 of the Act applies which states the right of a landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with section 23 of the Act.

I do not accept the Landlord’s argument that because the Tenant breached the Act by failing to provide written notice to end her tenancy that she remained responsible for the unit. Nor do I accept his argument that she accepts responsibility for the unit because she provided her forwarding address “as requested” by the Landlord.

After careful consideration of the testimony I find on a balance of probabilities that on January 30, 2010, the Tenant provided the Landlord and his fiancée with verbal notice that she would be ending her tenancy one month later, at the end of February 2010, and that the male would be occupying the unit from then on as the Landlord’s tenant. I further find the Landlord and his fiancée were aware that she had vacated the unit prior to the end of February 2010.

Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. The Landlord is insistent that his tenancy agreement was solely with the female Tenant; therefore I find the tenancy between the Landlord and the female Tenant ended at the end of February, 2010, when the female Tenant vacated the unit and removed her name from the utility accounts, pursuant to section 44(1)(d) of the Act.

I accept the female Tenant's testimony that she entered into a verbal agreement with the male tenant for the security deposit to be left with the Landlord, as the male tenant's deposit. Therefore the female Tenant has no entitlement to the security deposit currently held in trust by the Landlord.

Based on the Landlord's actions of accepting rent from the male tenant I find he entered into a verbal tenancy agreement with the male tenant.

Having found the female Tenant's tenancy ended in February 2010, I hereby dismiss the Landlord's claims for damages. These alleged damages would be related to a tenancy that occurred after February 2010 with a different tenant. That being said the female Tenant did accept responsibility for a hole in two walls that was created by her sons during her tenancy. Based on this acceptance I hereby award the Landlord \$395.00 to repair and paint the damaged walls (8 hrs @ \$45.00/hr plus \$35.00 for paint). This amount is to be reduced by the \$12.37 found in the unit and held by the Landlord.

The Landlord has brought this claim against the previous Tenant and not the tenant who occupied the unit during the most recent tenancy; therefore I decline to award recovery of the filing fee.



Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$382.63** (\$395.00 – 12.37). This Order must be served on the Tenant and may be enforced through Provincial Court as an Order of that Court.

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: December 08, 2010.

---

Dispute Resolution Officer