



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord (A.D.) said he sent his evidence package to the Tenant on November 10, 2010 by registered mail to the address for service indicated on her Application however it was returned to him unclaimed. The Tenant admitted that she had moved and had not advised the Residential Tenancy Branch or the Landlord of her new address for service. In the circumstances, I find that the Tenant has been served with the Landlords' evidence package as required by s. 88 of the Act.

### Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

### Background and Evidence

This tenancy started on June 1, 2009 and ended on June 1, 2010 when the Tenant moved out pursuant to a Mutual Agreement to End the Tenancy. Rent was \$700.00 per month. The Tenant paid a security deposit of \$350.00 which was returned to her at the end of the tenancy.

The Tenant claimed that she was approached by the Landlord's agent (J.D.) at the beginning of April 2010 and the Landlord's agent asked her if she would move out at the end of April 2010. The Tenant said she was agreeable to moving but asked the Landlord's agent if she could have until the end of June 2010 and the Landlord's agent agreed. The Tenant said the Landlord's agent gave her a copy of a Mutual Agreement to End Tenancy and she took it to her residence to read. The Tenant said that she noticed the Landlord's agent had written June 1, 2010 as the end of the tenancy instead of June 30, 2010 so she approached the Landlord's agent about this discrepancy.

The Tenant claimed that when she discussed the move out date again with the Landlord's agent, she became threatening and said the Tenant should leave on June 1, 2010 because she didn't want to anger the Landlord's agent. The Tenant said the Landlord's agent was standing very close to her during this conversation and she did

not feel safe. The Tenant said she was also told by the Landlord's agent that the rental unit was going to be rented by a friend of her sisters. The Tenant said she believed the Landlord was supposed to give her a 2 Month Notice to End Tenancy but because she was under duress, she signed the Mutual Agreement to End the Tenancy. Consequently, the Tenant sought compensation equal to one month's rent.

The Landlord denied that the Tenant was under duress when she agreed to sign the Mutual Agreement to End Tenancy. The Landlord claimed that the Tenant is an intelligent, strong-willed woman who (during the tenancy) was the manager of the Kamloops Farmer's Market and therefore was not easily intimidated and would have contacted the police if she felt threatened. The Landlord said that his agent asked the Tenant in April to move out because there were other ongoing issues such as her paying rent late, not cleaning up after her dog, drumming and chanting late in the evening and smoking marijuana on the rental property. Consequently, the Landlord said he thought it would be in the Tenant's best interests to end the tenancy by mutual agreement rather than by evicting her.

The Landlord also said that the Tenant agreed to move out and asked to stay until the beginning of June 2010 because she said she had lined up a caretaker job to commence at that time and might be able to negotiate accommodations as a part of that job. The Landlord denied that the Tenant was asked to move because someone was planning on moving into the rental unit and claimed that it was vacant until October 1, 2010. The Tenant admitted that she had been late paying rent, that she had had issues with the Landlord's agent (J.D.) over picking up after her dog and that J.D. (who lived in the upper suite of the rental property) had banged on the floor at least once when she was drumming. The Tenant said she only smoked marijuana outside and that the Landlord had given her permission to do so but admitted that she burned sage inside (as a ritual to clear energy). The Tenant also admitted that she had a caretaking job lined up but said that was to commence at the end of June 2010.

## Analysis

RTB Policy Guideline #8 (Unconscionable and Material Terms) states in part at p. 1, that a term of an agreement may be found to be unconscionable and unenforceable where "one party takes advantage of the ignorance, need or distress of a weaker party or exploits the age, infirmity or mental weakness of a party to secure their agreement to a term."

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlord's agent interfered with her exercise of free choice when she signed the Mutual Agreement to End the Tenancy and that she would not otherwise

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have signed it. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will need to provide additional, corroborating evidence to satisfy the burden of proof.

Given the contradictory evidence of the Parties as to whether the Tenant was coerced into signing the Mutual Agreement to End Tenancy and in the absence of any corroborating evidence from the Tenant, I find that there is insufficient evidence to conclude that she was coerced into signing that document. The Tenant provided a copy of the Mutual Agreement to End the Tenancy on which she wrote that she had signed it on May 1, 2010 "with the (Landlord's) agreement to give a good reference." I find that this evidence actually corroborates the Landlord's argument that the Tenant was given an opportunity to end the tenancy rather than to risk being evicted.

I also find that the Landlord had no duty under the Act to give the Tenant a 2 Month Notice. Section 49(3) of the Act only requires a Landlord to serve a 2 Month Notice on a Tenant if a close family member will be residing in the rental unit. A close family member is defined under s. 49(1) of the Act as "the father, mother, spouse or child of an individual or the father, mother, spouse or child of that individual's spouse." There was no evidence that a close family member was going to move into the rental unit and no reliable evidence that the tenancy was ending so that someone else could move in. For all of these reasons, the Tenant's application for compensation is dismissed without leave to reapply.

## Conclusion

The Tenant's 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: December 07, 2010.

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Dispute Resolution Officer