



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and her witnesses. The tenant had three witnesses who participated in the hearing directly by providing testimony and the landlord had an opportunity to question these witnesses.

The tenant had a fourth witness that I called to provide some specific confirmation of events. This witness was not able to join the hearing but did provide testimony that I relayed to the parties during the hearing. Neither party raised an objection to this process.

This hearing had been originally scheduled for December 17, 2010 but for health reasons the parties agreed to a postponement of the hearing until this date.

At the outset of the hearing the landlord acknowledged that the tenant has vacated the rental unit and there is no longer a need for an order of possession. I, therefore amend the landlord's application to exclude matters related to an order of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

### Background and Evidence

The tenancy began on July 1, 2010 as a month to month tenancy for a monthly rent of \$500.00 due on the 1<sup>st</sup> of the month and a security deposit of \$125.00 was paid on July 1, 2010. The parties agreed the tenancy ended on November 30, 2010.



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The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenant on November 16, 2010 with an effective date of November 26, 2010 for unpaid rent in the amount of \$775.00 that was due on November 1, 2010.

The landlord seeks compensation for unpaid rent as follows: July 2010 - \$50.00; August 2010 - \$100.00; September 2010 - \$500.00; November 2010 - \$500.00; and \$250.00 for ½ month of December 2010 as the landlord states she could not rent the unit until the move out inspection was completed.

The tenant contends that she has paid the landlord all rent owed. The tenant acknowledges that she made two payments for rent in August 2010, one in the amount of \$400.00 and one in the amount of \$100.00.

The tenant also acknowledges that she was late paying rent for November but that she did have her son take her to the bank and get the rent money and then she paid the landlord. The tenant testified the landlord never provided rent receipts.

The landlord referred to a document in her evidence that she called an IOU that suggests the tenant agreed to outstanding rent in the amount of \$275.00 as of October 17, 2010. The document outlines that the tenant will receive 30 days free for September for work the tenant agreed to complete; that there was an October balance forward (although no amount is listed); that November not paid yet in the amount of \$150.00 and there is an additional amount of \$125.00 but it is not defined.

From the tenant's witness who did not join the call but provided testimony to me directly she confirmed the landlord had provided a final notice for a move out inspection to the witness and that as the tenant was hospitalized at the time specified representatives acting on the tenant's behalf attended the move out inspection to confirm the condition of the rental unit only. The witness also confirmed the landlord had served all documents for this hearing to her and she forwarded them on to the tenant.

The tenant submitted into evidence a written statement signed by one of the tenant's witnesses and by the Housing Facilitator of the local Brain Injury Society who assisted moving out the tenant on November 30, 2010. In the statement the parties state that the landlord had harassed them so much during the move out that after constant insistence on the part of the landlord they returned the keys to the landlord without the tenant's consent and without the tenant having an opportunity to clean the unit.

The statement and testimony provided by one of the witnesses goes on to say the landlord then followed the movers and tried to enter a building they had stopped at but that when they wouldn't let her in she tried to ring all the tenants in the complex to get

someone to let her in. The landlord confirms that she did follow the movers when they left the property.

The landlord is claiming a total of \$275.69 for the replacement of a light cover and duplex plate; cleaning for 4 hours at \$15.00 per hour; drywall repairs and painting for 3 hours at \$20.00 per hour; and the replacement of a door at \$125.00. The landlord also seeks compensation for utility charges for the periods October 4 to November 3, 2010 and from November 4 to 30 2010 and the balance of the security deposit (\$125.00) that should have been \$250.00.

## Analysis

To be successful in seeking compensation for loss or damage under the *Act*, regulation or tenancy agreement the party making the claim, in this case the landlord, must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of that loss or damage; and
4. The steps taken, if any, by the party to mitigate the losses.

As to the landlord's claim for unpaid rent I accept the landlord issued a Notice to End Tenancy for Unpaid Rent on November 16, 2010 for unpaid rent in the amount of \$775.00 that had been due by November 1, 2010. However according to the landlord's claim she states that the tenant owed her rent in the amount of \$1,150.00 by November 1, 2010.

I also find the document that the landlord calls an "IOU" to be unclear and therefore an unreliable form of documentary evidence. As the landlord has not provided any tenant account ledger or copies of receipts for rent paid and in conjunction with the tenant's assertion that she has paid all rents owed, I find the landlord has failed to provide sufficient evidence that the tenant owes any rent at all. I dismiss this portion of the landlord's application.

In relation to the landlord's claim for compensation for cleaning and repairs, I accept that the Condition Inspection Report is an accurate reflection of the condition of the rental unit two weeks after the end of the tenancy. I also accept as reasonable the value of the associated costs.

However, I also accept the written evidence before me that shows that it was the landlord that prevented the tenant from being able to return to the rental unit to clean

and/or make any repairs that may have been required and the landlord has therefore not complied with the requirements under Section 7 of the *Act* to take all reasonable steps to mitigate her loss. As a result, I dismiss this portion of the landlord's application.

In relation to the landlord's claim to lost rent for ½ of a month in December 2010, it was the landlord who set the date for the move out inspection at December 15, 2010, a day for which she knew that the tenant would be hospitalized for surgery. I therefore find that the tenant cannot be held responsible for the landlord's scheduling and therefore the rent for that portion of December 2010. I dismiss this portion of the landlord's application.

As the tenancy has ended, the landlord is not entitled to collect more of a security deposit and I therefore dismiss that portion of the landlord's claim. In regard to the landlord's claim for utilities, as there is no written tenancy agreement that states the tenant is responsible for utilities, I find the landlord has failed to provide sufficient evidence that she has suffered a loss, and I dismiss this portion of the landlord's application.

## Conclusion

Based on the above findings I find that the tenant is entitled to the return of her security deposit in full pursuant to Section 67 and I grant a monetary order in the amount of **\$150.00**.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the landlord was unsuccessful in her application I dismiss the portion of her application seeking recovery of the filing fee and registered mail costs associated with this hearing.

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: January 13, 2011.

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Residential Tenancy Branch