



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNR, O

### Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), regulations or tenancy agreement, and a Monetary Order for unpaid rent.

Service of the hearing documents was done in accordance with section 89 of the Act, and sent by registered mail to the tenant on October 21, 2010. The tenant confirmed receipt of the hearing documents. The tenant states she sent the landlord her evidence package by registered mail but this was returned to her as it was uncollected by the landlord. The landlord was deemed to be served the tenants evidence package the fifth day after it were mailed as per section 90(a) of the Act.

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 make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both Parties agree that this tenancy started on October 01, 2010. A tenancy agreement was signed by the Parties on September 14, 2010 which states rent for this unit is \$1,275.00 per month and is due on the 1<sup>st</sup> of each month. This was a fixed term tenancy which was due to expire on September 30, 2011. The tenant had paid two cheques to the landlord for her security deposit but neither cheque has been cashed at the bank. The tenancy ended on October 04, 2010.

The landlord testifies that the tenant agreed to rent the unit for a fixed term of one year and paid her first month's rent of \$1,275.00 by cheque. The landlord testifies the tenant moved from the rental unit on October 04, 2010 just four days into the tenancy. On October 12, 2010 the landlord states the tenants rent cheque was returned by the bank as the tenant had put a stop on it.

The landlord testifies that when the tenant rented the unit it did require some work but the tenant moved out before this work could be completed. The landlord testifies that her previous tenant had no complaints about the condition of the unit.

The landlord testifies that she attempted to re-rent the unit and advertised it on Craig's List and in the newspaper but was unable to re-rent the unit until December 01, 2010. The landlord states when she filed her application she applied for money owed or compensation for damage or loss as she did not know at that time when she would be able to re-rent the unit. As it did not rent for October or November, 2010 she would like to amend her application to include rent for November, 2010.

The tenant testifies that after moving into the unit she found it to be inhabitable. On move in day the landlords' stepfather was in the bathroom doing some repair work but the tenant states the unit smelt badly of mould. She states this smell of mould impregnated hers and her daughters' clothes and their futon bed after only three days of

loving there. She states the landlords' stepfather gave her some cedar chips to try to get rid of the smell but it was making them ill living there.

The tenant testifies that she spoke to the previous tenant who lived next door and she said that the smell was not caused by her children and that this previous tenant had encountered many issues with the unit and had told the landlord about these.

The tenant states she had to move out and it took her six weeks to then find alternative accommodation. She states she looked at Craig's List everyday but never saw an advert for the unit from the landlord. She submits the landlord did not attempt to advertise the unit and would not have been able to re-rent the unit as it was uninhabitable. The tenant states she has suffered damages and costs in having to move from the unit.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. When a tenant signs a tenancy agreement for a fixed term tenancy she is bound by the terms of that agreement unless the tenancy is frustrated or both Parties have mutually agreed to end the tenancy before the end of the fixed term.

As the tenant has provide no evidence to show that the unit was uninhabitable thus making the tenancy frustrated, I find the landlord is entitled to recover a loss of rent for October, 2010. Normally a landlord may also recover a loss of rental income up to the date that the tenancy could legally end or up to the date the unit is re-rented. In this circumstance the landlord has asked to amend her application to include rent for November, 2010 however she has not applied for this sum on her application and has provided no evidence to show what steps she took to mitigate her loss by re-advertising the unit for rent as soon as the tenant moved out.

Consequently it is my decision that the landlord will receive a Monetary Order for unpaid rent for October, 2010 to the sum of \$1,275.00 as claimed pursuant to s. 67 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,275.00**. The order must be served on the respondent and is enforceable through the 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: February 22, 2011.

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Residential Tenancy Branch