



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MDN, MNR, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for unpaid rent and for damage to the unit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions. The landlord did not participate in the hearing: B.V.Z. stated that he is a friend of the landlord's, and that she had requested that he represent her at these proceedings.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease starting on November 1<sup>st</sup>, 2009. The rent was \$1000.00 payable on the first of each month. The tenant did not pay a security deposit. Condition inspection reports were not completed at the start or the end of the tenancy.

In her documentation, the landlord attached 32 copies of photographic evidence sent by fax, which produced blacked out prints that were unreadable. B.V.Z. submitted that the invoices speak for themselves concerning the damages. He described in part the Home Depot invoice of \$1422.60 for damages to closet doors, weather strips, washer/dryer, holes in the walls, French doors, paint, and cleaning material. He also clarified that the \$129.02 pertained to processing documents related to this dispute on the tenant.

The tenant testified that there was no written agreement at the start of the tenancy. He stated that the landlord completed a written agreement at the bank's request; that she told him that it was only a formality conditional upon her qualifying for a second mortgage; and that the tenancy would continue month to month as verbally agreed, and not as a fixed term.

Concerning the damages, the tenant said that they were all pre-existing. He stated that he left the unit spotless, and that he has witnesses who can testify to the condition of the property. He stated that the landlord was doing a lot of the work that was already ongoing when he moved in and he disagreed with every claim made by the landlord. Concerning the Terasen gas invoice, he stated that the landlord's son was living in the finished garage; that the parties had agreed to pay the utility alternately every other month, which is why the bill remained in the landlord's name; and that the outstanding charge was during the landlord's son turn to pay.

Regarding the photographs, the tenant stated that they were similar to those received at RTB and that they were not readable; he further argued that he recalled that they were taken in his presence at the start and not the end of the tenancy.

B.V.Z. had no rebuttal evidence; he stated that he was not present during these interactions between the landlord and the tenant, and that the landlord did not provide him with further clarification.

### Analysis

The tenancy agreement is a contract of adhesion drawn by the landlord. If the tenant wished to rent from the landlord under any other terms than those specified in the agreement, he ought not to have signed the agreement. Once signed, the tenant is obliged to accept the terms of the agreement without modification. The agreement states that the tenancy was a fixed term, and not a month to month.

The tenant's testimony confirmed that the tenancy ended June 30<sup>th</sup>, 2010. Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. By ending the tenancy early the landlord lost rent for July 2010 and I find that she is entitled to recover that loss.

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence, such as condition inspection reports as required by statute, the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 7(2) of the *Act* also states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. B.V.Z. stated that he did not go to the residence to verify the landlord's claim; he did not describe the photographs, and he provided no details or clarification as to when they were taken.

B.V.Z. did not provide convincing evidence in support of the landlord's claim of damages caused by the tenant and therefore the landlord's claim for damages is dismissed.

Concerning the \$129.02 processing fee; there is no provision for a party to make a claim under the Act for litigation costs other than the filing fee.

### Conclusion

The landlord established a claim of \$1000.00. Since she was partially successful, she is entitled to recover a portion of the filing fee for a claim totalling \$1025.00

This Order may be registered in the Small Claims Court and enforced 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: April 15, 2011.

---

Residential Tenancy Branch