



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement.

The parties and the Tenant's witness appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

### Preliminary Issue:

The amount of the claim on the Tenant's application listed the amount of \$1,950.00, although the evidence supports the actual claim is for \$3,850.00. However, the Tenant did not amend his application to request this amount. The rules of administrative fair play and natural justice, as well as the Rules of Procedure, require that the party be notified of the claim made against them.

The Tenant was given the option of dismissing his application with leave to reapply or to continue based upon the claim for \$1,950.00. The Tenant chose to continue on his original claim of \$1,950.00.

### Issue(s) to be Decided

Has the Landlord breached the Act or tenancy agreement, entitling the Tenant to a monetary order for money owed or compensation for damage or loss?

### Background and Evidence

The Tenant testified that this tenancy started on February 8 or 10, 2010, and ended on or about June 7, 2010, that monthly rent was \$650.00 and that he has not paid a security deposit. The Landlord stated that monthly rent was \$600.00.

There is no written tenancy agreement and the Tenant stated that the Landlord allowed him to pay the rent in equal instalments of \$325.00 every two weeks.

The Tenant's claim is the equivalent of rent for three months, based upon his assertion that the Landlord, in the first week of May 2010, informed him the rental unit may be

sold. Three days later, the Landlord informed him that the rental unit was not being sold.

The Tenant stated that in the last week of May, the Landlord informed the Tenant the rental unit had been sold and to start looking for a new place. During the first week of June, according to the Tenant, he was informed the new owners were coming in from Calgary, with a moving van having already been rented.

The Tenant submitted that on June 7, 2010, the Landlord found him at a local restaurant and asked him why he had not moved out as the new owners, which turned out to be the Landlord's sons, had already moved in.

The Tenant returned to the rental unit to retrieve his belongings and the Landlord's sons helped him move out that night. The Tenant submitted that he had no place to move and had to stay with friends.

The Tenant submitted that he had not been issued a Notice to End Tenancy and that having to move created a hardship as he was just getting over some medical problems.

The Tenant agreed that he did not pay rent the last two weeks as he did not know the status of his tenancy.

The Landlord responded that she is not the Landlord or owner, but rather the cleaner for the owner and that she allowed the Tenant to stay in the rental unit to help him out and that there was never a tenancy agreement with the Tenant.

The Landlord stated that she was trying to sell the rental unit privately for the owner and had discussed with the Tenant that she and her sons were attempting to purchase the unit. The Landlord acknowledged that her sons did move into the rental unit, but neither she nor her sons ultimately purchased the rental unit.

According to the Landlord, the Tenant paid a total of \$2,175.00 during the tenancy. However, I note that there was no evidence or proof of receipts or payments.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

As to the Landlord's assertion that she is not the Landlord, the Act defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, (i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. Thus I find that the person listed in the application meets the definition of a landlord for purposes of the Act and this hearing.

Dealing with the rent, the onus is on the Landlord to prove the amount of rent payable and agreed upon at the commencement of the tenancy. The Landlord did not prepare a tenancy agreement, and therefore is unable to prove the amount of rent. Without that proof, the Tenant's evidence will be the acceptable evidence. I therefore find that the parties entered into a tenancy agreement, that this tenancy began on February 10, 2010, on a month to month basis, and the rent for the rental unit was \$650.00, which could be paid in two equal instalments biweekly.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, the Tenant in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I further find, on a balance of probabilities, that in early May, the Landlord issued verbal conflicting notices to the Tenant that he had to vacate the rental unit, only to withdraw that notice shortly thereafter. I find that this pattern repeated itself during the month of May and that the Tenant was illegally evicted on June 7, 2010, when the Landlord's sons moved into the rental unit without notice.

In many respects, the Landlord's verbal notices to the Tenant of her intent or the owner's intent to sell the property were the equivalent to the Landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 (3) or (5) of the Act.

Section 51 of the Act provides as follows:

*Tenant's compensation: section 49 notice*

51 (1) *A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(2) *In addition to the amount payable under subsection (1), if*  
*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*  
*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*The landlord, or purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

I therefore find that the Tenant, under section 51 of the Act, is entitled to the equivalent of three month's rent, as I find that the Tenant was issued conflicting verbal notices to end the tenancy due to the Landlord selling the rental unit and that the rental unit was not used for its stated purpose as told to the Tenant in the verbal notices.

### Conclusion

I find that the Tenant has established a **monetary claim** of **\$1,625.00**, comprised of the equivalent of three month's rent, less the two week's rent (\$325.00) the Tenant acknowledged not paying.

I grant the Tenant a monetary order in the amount of \$1,625.00. This order is a final, legally binding order, and may be filed in the Provincial Court (Small Claims) should enforcement become necessary.

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: June 24, 2011.

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Residential Tenancy Branch