



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF  
                              CNR MNDC MNSD OLC FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage to the unit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the notice to end tenancy for unpaid rent, an Order to have the Landlord comply with the Act, regulation or tenancy agreement, and a Monetary Order for the return of her security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence provided by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Preliminary Issues

The parties confirmed the tenancy ended September 17, 2011 and the Landlord has regained possession of the rental unit. As a result the Landlord withdrew his request for an Order of Possession and the Tenant withdrew her request for Orders to cancel the notice to end tenancy and for the Landlord to comply with the Act.

### Issue(s) to be Decided

1. Has the Tenant breached the Residential Tenancy Act, Regulation and/or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach in accordance with section 67 of the Act?

3. Has the Landlord breached the Residential Tenancy Act, Regulation and/or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach in accordance with section 67 of the Act?

### Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement that began on March 1, 2010. Rent was payable on the first of each month in the amount of \$600.00 and on February 14, 2010 the Tenant paid \$300.00 as the security deposit. No move in or move out inspection reports were completed however the parties did do a walkthrough of the unit at the beginning and end of the tenancy. The Tenant took photos of the unit at the beginning and end of her tenancy which she provided in evidence. The Landlord served the Tenant with notice to end her tenancy on July 25, 2011 for reasons that his son and daughter in-law would be occupying the rental unit. A second notice to end tenancy was served to the Tenant on July 28, 2011 revising the end date of the tenancy to September 21, 2011. The Tenant provided her forwarding address to the Landlord in her amended application which was served to the Landlord September 12, 2011.

The Tenant affirmed that she did not pay rent for September 2011 as she considered rent to be paid with the compensation under section 51 of the Act for receiving notice to end her tenancy for landlord's use of the property. She informed the Landlord in July that she would be vacating the property before the end of September, sometime around the 17<sup>th</sup> or 21<sup>st</sup> when her school exams were completed and when her dad could assist her in moving. She contends that she left the rental unit clean and undamaged as supported by her photographic evidence and is therefore claiming the following:

- \$260.00 for the balance of compensation owed to her for September as she vacated the property on the 17<sup>th</sup> leaving 13 days remaining for her compensation for having to move for landlord's use of the property; and
- \$100.00 to cover the cost of making ten trips to the residential tenancy branch for information and making her application; and
- \$37.25 for costs to make her application which includes \$25.00 for bus fare \$7.00 for color photos, \$2.25 for black and white photos, and \$3.00 for the cds used in her evidence.
- \$67.99 for moving expenses to cover the cost of the u-haul rental and gas
- \$300.00 for the return of her security deposit

The Landlord questioned why he would have to pay for the Tenant's moving expenses and her costs to attend the residential tenancy branch and compile her evidence. He

too had to suffer these expenses and he feels it is part and parcel of making a claim and presenting evidence. He stated that he had no problem giving some of her security deposit back however he does feel he is entitled to \$55.08 which consists of \$25.08 to purchase paint and \$30.00 labour costs to paint the rental unit. He confirms the Tenant filled the nail holes in the walls with putty and questioned who was covering the costs to paint them. The Landlord also requested rent for September of \$600.00 as the Tenant occupied the rental unit for seventeen days and did not pay rent. He confirmed he issued the notices to end tenancy and argued they were not legal notices. He issued the second notice to accommodate the move out date the Tenant requested because that was the date when her dad could assist with her move.

In closing the Tenant advised this was not a mutual agreement for her to move. She cannot afford to keep moving and only did so because the Landlord issued her the notice which stated his son and daughter in law were moving in.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

### **Landlord's application**

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy and the value of the loss. Accordingly, the only evidence before me from the Landlord was verbal testimony and I find the disputed verbal testimony insufficient to meet the burden of proof. Accordingly I dismiss the Landlord's claim for \$55.08.

The evidence supports the Landlord issued a typed written notice to end tenancy on July 25<sup>th</sup>, 2011 which states the reason for issuing the notice “because my son and our daughter in law are moving back home ... my daughter in law is expecting and we simply need the space downstairs”.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, and (c) state the effective date of the notice.

Based on the aforementioned I find the Landlord served the Tenant an effective notice to end tenancy pursuant to section 49 of the Act, 2 Month Notice to End Tenancy for Landlord's use of the property. Although this notice provided an incorrect end date of the tenancy, section 53 of the Act provides that incorrect effective dates are automatically corrected. Accordingly the effective date of the Notice is September 30, 2011.

Section 50 of the Act provides (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* the tenant may end the tenancy early by (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

Section 51 of the Act provides (1) A tenant who receives a notice to end a 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.(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The evidence supports the Tenant informed the Landlord of her intent to vacate the property prior to the end of September 2011 which is supported by the second notice issued by the Landlord on July 28, 2011 to accommodate the Tenant's request to move out on September 21, 2011. Furthermore the evidence provides that the Landlord regained possession of the rental unit as of September 17, 2011.

As per the aforementioned the Landlord was not entitled to payment for September 2011 rent as the rent was offset from compensation owed to the Tenant under section 51 of the Act. Accordingly I dismiss the Landlord's request for \$600.00 for unpaid rent.

The Landlord has not been successful with his application; therefore he must bear the burden of the cost of filing his application.

### **Tenant's application**

As noted in the aforementioned, the Tenant is entitled to monetary compensation of \$600.00 which is equal to one month's rent pursuant to section 51 of the Act and the 17 days of September 2011 rent is considered paid from this compensation. The Tenant ended the tenancy early pursuant to Section 50 of the Act. Therefore, I find the remaining 13 days of compensation is owed to the Tenant. Accordingly I hereby award the Tenant **\$256.44** of rental compensation (\$600.00 x 12 mo divided by 365 days x 13 days).

The Tenant is seeking \$67.99 in moving costs for having to vacate the property for landlord's use. There is no provision in the Act that provides for compensation for moving costs relating to a Section 49 notice; rather the Act provides compensation equal to one month's rent which is intended to cover costs of having to move. Therefore there is insufficient evidence to meet the test or burden of proof, as listed above, and I dismiss the Tenant's claim for moving costs.

The Tenant seeks \$137.25 in costs associated with obtaining information, making her application, and compiling and submitting her evidence. I find that the Tenant has chosen to incur these costs that cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Therefore, I find that the Tenant may not claim these costs, as they are costs which are not denominated or named by the *Residential Tenancy Act*. Accordingly I dismiss the claim of \$137.25 in costs.

Having dismissed the Landlord's application above he is not entitled to retain any portion of the Tenant's security deposit. Therefore I award the Tenant recovery of her security deposit and interest in the amount of **\$300.00** + \$0.00 interest.

The Tenant has been successful with her application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$606.44** (\$256.44 + \$300.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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: October 11, 2011.

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Residential Tenancy Branch