



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for a Monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

Both parties agree that this month to month tenancy started on November 01, 2010. This was a verbal agreement between the parties for this basement unit at a monthly rent of \$500.00 due on the first day of each month in advance.

The landlord testifies the tenant failed to pay rent for January and February, 2011 and seeks to recover the sum of \$1,000.00. The landlord testifies that they went on holiday on December 31, 2011 and returned on January 11, 2011 and found the rent had not

been paid. The landlord states she contacted the tenant who informed her that she had lost her job and was staying at her boyfriend's parent's house. The landlord states the tenant had not given notice to end her tenancy; the rental unit still contained all the tenant's belongings and the tenant returned to the unit whenever she felt like it. The landlord testifies the tenant told her she would come and collect her belongings and clean the unit; however, she never came to do this. The landlord states she was unable to re-rent the unit because the tenant's belongings remained and she was still coming to the unit. The landlord states she did eventually pack up the tenant's belongings and the tenant eventually come and collect some of this. The remainder was stored by the landlord until the tenant demanded them back. The landlord testifies the tenancy ended on February 28, 2011

The landlord testifies she was willing to give the tenant time to pay the outstanding rent and agreed to reduce the arrears to \$400.00 if the tenant agreed to pay this by September 01, 2011. The landlord states the tenant did pay \$40.00 towards this agreed sum and signed an agreement with the landlord that she would pay the remainder of the reduced sum of \$360.00 by September 01, 2011. The landlord testifies that the tenant did not fulfill this agreement and has made no other payments as agreed by September 01, 2011. The landlord states that consequently this agreement is null-in-void and the landlord seeks to recover all the outstanding rent of \$960.00.

The landlord testifies before they went on holiday on December 31, 2010 they did have a conversation with the tenant about house-sitting for them and looking after the landlord's dog. The landlord testifies that no monetary amount was discussed at this time. By the time they were ready to leave for the airport the tenant had still not confirmed that she was willing to house-sit so the landlord had to put the dog in kennels and arrange for friends to come into the house to collect mail, newspapers and water the plants. The landlord testifies her friends told her that there was evidence that the tenant had been in the landlord house while they were away as there was dirty dishes and food left out. The landlord states the tenant had also ordered a movie on the landlord's cable system.

The tenant testifies that she does not believe she owes rent for January, 2011 as the landlord asked her to house-sit while they went on vacation in exchange for rent. The tenant states no rent reduction was discussed but she assumed because she agreed to house-sit that the landlord would not make her pay January's rent.

The tenant testifies that the landlord spoke to the couple she moved in with and told them she had not paid rent so she had three days to pack up her belongings and move out. The tenant states when she went to the unit the landlord had already packed up her belongings and some items were missing. The tenant states the landlord told her she would keep the missing items until the tenant paid rent. The tenant states these items have since been returned to her

The tenant agrees she did not fulfill the contract she signed with the landlord to pay the reduced rent by September 01, 2011 as she did not have a job. The tenant also agrees she did use some of the landlord's dishes when she house-sat for her and did feed the fish, bring in the mail and newspapers and water the plants. The tenant also agrees she purchased a movie on the landlord's cable account that she did intend to pay for but simply forgot.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent for January and February, 2011; Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Section 45 of the *Act* states: *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

There is no evidence that the landlord agreed to reduce rent for January as payment or reward for the tenant house-sitting for the landlord and the tenant has provided no evidence that she did actually undertake this role as house-sitter for the whole period the landlord was on vacation.

Consequently, I find this tenancy ended sometime in January, 2011 but as the tenant failed to provide written notice to the landlord by January 31, 2011 the tenant is therefore responsible for unpaid rent for February, 2011.

I further find the landlord attempted to mitigate the loss by agreeing the debt could be reduced if the tenant paid the sum of \$400.00 by September 01, 2011 as the tenant failed to abide by this agreement the agreement is null-in-void.

The landlord has therefore established her claim for unpaid rent for January and February, 2011 to the sum of \$1,000.00. As both parties agree that the tenant did pay \$40.00 as part of a separate agreement with the landlord this amount will be deducted from the rent arrears leaving a balance of **\$960.00**. The landlord will receive a Monetary Order for this amount pursuant to s. 67 of the *Act*.

As the landlord has been successful with this claim the landlord is also entitled to recover the **\$50.00** filing fee paid for this proceeding pursuant to s. 72(1) 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 **\$1,010.00**. 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: November 23, 2011.

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Residential Tenancy Branch