



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed and to retain the security deposit in partial compensation for the claim.

Both parties appeared at the hearing and gave evidence.

### **Issue(s) to be Decided**

The landlord was seeking \$900.00 for rent owed and the issue to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rental arrears.

### **Background and Evidence**

The landlord testified that the tenancy began in August of 2010 with the most current rent being \$1,000.00 per month. There was no written tenancy agreement. The landlord stated that no security deposit was paid. The tenant disputed this testimony and stated that a security deposit of \$550.00 was paid to the landlord at the start of the tenancy. The tenant pointed out that the landlord's position that no deposit had ever been paid was not consistent with the fact that the landlord's application actually included a request for him to be permitted to keep the security deposit.

The landlord testified that the tenant put a stop-pay on her rent cheque of \$900.00 for the month of October 2011 and moved out without paying any rent at all. Submitted into evidence was a copy of the rent cheque dated October 1, 2011 for \$900.00 showing that it had been dishonoured by the bank because a stop pay had been placed on the cheque.

The landlord testified that the tenant left no forwarding address. However, once the landlord had found out where she lived, he made an application for dispute resolution claiming the unpaid rent. The landlord explained that he was only claiming \$900.00 of the \$1,000.00 rent owed because that was the amount he was able to prove was unpaid.

The tenant disputed that any money was owed to the landlord.

The tenant stated that she had decided to move out because the landlord suddenly tried to raise her rent by \$200.00. The tenant testified that she had discussed her intentions to end the tenancy in October with the landlord. The tenant testified that the landlord had indicated that he would be keeping her security deposit.

The tenant freely acknowledged that she had placed a stop-pay on the rent cheque for October 2012 but stated that this was because she decided to give the landlord \$500.00 in cash and in paying this amount to him directly, she also told him he could keep the \$550.00 security deposit to cover the remaining rent owed for October.

The tenant stated that she did not have a receipt for the cash payment. According to the tenant, she often paid a portion of her rent in cash, but the landlord had never issued rent receipts for any of these cash payments in the past. The landlord disputed this allegation and pointed out that the tenant never asked him for a receipt.

The tenant testified that she found a new place to move and vacated the unit a week before the end of the month of October 2011.

The tenant's position is that no money is now owed to the landlord, and in fact he ended up with an extra \$50.00 because she had paid \$500.00 in cash and surrendered her \$550.00 security deposit for October rent.

### **Analysis**

Section 13 of the Act states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004 and that each agreement must comply with any requirements prescribed in the regulations. Section 13 (3) requires that, within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

I find that the landlord did not prepare a written tenancy agreement.

Section 26(1) of the Act states that 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. Section 26(2) states that a landlord must provide a tenant with a receipt for rent paid in cash.

I find that the tenant did not pay her rent on October 1, 2011, when it was due. I also find that the landlord did not offer sufficient proof to establish that he always issued a receipt for every cash payment he received.

In addition, I accept the evidence confirmed by both parties that the tenant had placed a stop-pay on the cheque dated October 1, 2011.

With respect to the landlord's testimony that nothing was paid for October, I find that this verbal testimony was disputed by tenant who stated that the reason she put a stop-pay on the cheque was because she had instead made a partial payment of October's rent in cash and also allocated her security deposit to cover the remainder for a total payment of \$1,050.00.

I find that the conflicting verbal testimony respecting what transpired in October 2011 remains unresolved. Although the landlord provided verbal testimony regarding the status of the tenant's rent, the landlord neglected to submit any rental records nor a copy of the tenant's account ledger, beyond the single piece of evidence consisting of a copy of the dishonoured cheque in question, for which the tenant offered a feasible explanation during her testimony.

I find that in any dispute when the evidence consists of conflicting and disputed verbal testimony, one party's statement may ultimately function to cancel the other's. However, it is important to note that these two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party always carries the added burden of proof. The party who has the burden of proof is the applicant who is making the claim. In other words, the landlord has the onus of proving during these proceedings, that the rent was owed and unpaid.

In this instance I find that the parties were completely at odds with one another's facts and, aside from both agreeing that the cheque was stopped, there was no agreement as to what happened and why.

Nonetheless, I find it is not necessary to determine which side is more credible or which set of "facts" is more believable. The reason that this is so is because in the case before me, I find that the party seeking compensation, has not succeeded in sufficiently proving on a balance of probabilities that he is entitled to compensation for unpaid rent.

In making this determination, it follows that the tenant's right to the return of her security deposit, if any, has been waived by the tenant according to her testimony that it was allocated to the remaining rent owed.

### **Conclusion**

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety without leave to reapply.

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 12, 2012.

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Residential Tenancy Branch