



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application filed March 27, 2012: MNR; MNDC; FF

Tenant's application filed May 4, 2012: MNDC; MNSD

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for unpaid rent; compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement; and return of the pet damage deposit.

This matter was convened on May 25, 2012, and adjourned to June 19, 2012 due to insufficient time to hear fully from both parties.

The parties and the Landlord's witness gave affirmed testimony.

It is important to note that the Tenant provided documentary evidence on June 13, 2012, which is after the Hearing commenced and therefore was not considered.

### **Issues to be Decided**

1. Is the Landlord entitled to a monetary award for unpaid rent for March, 2012; loss of revenue for April, 2012; and unpaid utilities?
2. Is the Tenant entitled to a monetary award in the amount of double the pet damage deposit and compensation for loss of quiet enjoyment of the rental unit?

### **Background and Evidence**

This tenancy began on August 16, 2011. Monthly rent was \$600.00, due on the first day of each month.

The Tenant paid a security deposit in the amount of \$300.00 on August 16, 2011 and a pet damage deposit in the amount of \$300.00 on November 17, 2011.

The Landlord provided the following testimony:

The Landlord testified that the Tenant moved out of the rental unit on March 23, 2012, without giving sufficient notice to end the tenancy. She stated that the Tenant paid ½ of March's rent on March 2, 2012, but has not paid the other half. The Landlord re-rented the rental unit effective May 1, 2012. The new tenants started moving some possessions into the rental unit on April 26, 2012, but did not pay rent or inhabit the rental unit until May 1, 2012. The Landlord seeks \$300.00 unpaid rent for March, 2012, and \$600.00 loss of revenue for April.

The Landlord stated that rent did not include utilities. She testified that when she filed her Application for Dispute Resolution, the Tenant owed \$173.00 for her share of utilities. She testified that since she filed her application, the Tenant deposited \$60.00 into her bank account and therefore she is amending the amount she seeks to \$113.00 for unpaid utilities.

The Tenant provided the following testimony:

The Tenant stated that utilities were included in the rent at the beginning of the tenancy but that at some point in the tenancy, the Landlord's agent put in meters and required her to pay for any utilities she used. The Tenant stated that she was never given copies of any hydro bills and that she only used electricity for lights, the fridge and the stove. The Tenant stated that she agreed that she should pay utilities if she was provided proof of the cost. The Tenant stated that she believed \$15.00 per billing period would be fair.

The Tenant testified that the Landlord and her agent were away in Mexico from January until March, 2012, and that they did not provide contact information for an agent while they were away. She stated that she sent an e-mail to the Landlord on March 7, 2012, advising that she was ending the tenancy effective the end of March, 2012. She stated she could not provide her notice in writing because the e-mail address was the only contact information she had for the Landlord and her agent. The Tenant testified that the rental unit was in need of repairs and that she was ill because of mould in the rental unit and had to move out.

The Tenant testified that the Landlord agreed to use the \$300.00 security deposit to pay off the rest of March's rent. She stated that she gave the Landlord her forwarding address on March 23, 2012, and that the Landlord told her she would return the pet damage deposit within 15 days. The Tenant seeks compensation in the amount of double the pet damage deposit because the Landlord has not returned it.

The Tenant also seeks \$400.00 in compensation for loss of peaceful enjoyment of the rental unit (\$100.00 per month for 4 months). She stated that between September, 2011 and December, 2011, on many occasions the Landlord's agent harassed her and her daughter by forcing his way into the rental unit, uninvited, in a drunken state and making inappropriate comments of a sexual nature towards her and her young daughter.

The Landlord gave the following reply:

The Landlord's agent denied making any inappropriate remarks to or about the Tenant and the Tenant's daughter. He stated that he never forced his way into the rental unit. He stated that the Tenant had dogs who would have attacked him if he was aggressive towards the Tenant or her daughter. The Landlord's agent stated that one of the Tenants dogs killed two of the Landlord's turkeys. The Landlord's agent testified that he may have had a beer or two on occasion, but that he was not a drunk.

The Landlord's witness stated that she is a character reference for the Landlord's agent. She stated that she has known the Landlord's agent for 15 years, having shared work studios and professors for two years. She stated that she has never heard the Landlord's agent make inappropriate remarks of a sexual nature to her or about others.

**Analysis**

Each party has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the other party pay for the loss requires the applicant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Regarding the Tenant's Claim

Security deposits and pet damage deposits are held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit or pet damage deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. repay the deposits in full, together with any accrued interest; or
2. make an application for dispute resolution **claiming against the deposits**.

In this case, the parties agreed that the Tenant gave the Landlord her forwarding address on the day that the tenancy ended, March 23, 2012. The Landlord filed her Application for Dispute on March 27, 2012, but **did not claim against the deposits** in her application.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the deposits. The Tenant testified that the parties had an agreement that the Landlord would apply the security deposit towards half of March's rent. The Landlord disputed that she agreed to this. However, I find that the Tenant gave up her right to apply for return of the security deposit when she considered it used towards payment of March's rent.

With respect to the pet damage deposit, I find that the Tenant is entitled to a monetary order for double the pet damage deposit, in the amount of **\$600.00**. No interest has accrued on the pet damage deposit.

I find the Tenant provided insufficient evidence to support her claim of \$400.00 for loss of peaceful enjoyment and this portion of her application is dismissed. It was the parties' habit to communicate primarily by e-mail. The Tenant provided copies of many e-mails in evidence, the contents of which are mostly about unpaid rent. The Tenant provided some photographic evidence that the rental unit was in need of repairs, but provided insufficient evidence that she had sent the Landlord notice that repairs were required. I find that the Tenant provided insufficient evidence that the Landlord's agent was harassing the Tenant and her daughter. The Tenant provided a written statement from her daughter which is vague with respect to "complimentary" statements, and testimony that there were others who overheard the Landlord's agent inappropriate comments, but she called no witnesses. The Landlord's agent denied making such comments.

#### Regarding the Landlord's Claim

I find that the Tenant owes \$300.00 in unpaid rent for the month of March, 2012. A security deposit may not be used in lieu of rent without the express consent of the Landlord or an Order of the Director. As mentioned above, I find that the Tenant gave

up her right to claim against the security deposit for the purposes of Section 38(6) of the Act when she considered it to be used for unpaid rent. The Landlord still retains the security deposit in the amount of \$300.00, and I order that the Landlord may apply the security deposit towards unpaid rent for the month of March, 2012, leaving a balance owing of nil.

Section 45 of the Act provides for the ways in which a tenant may end a tenancy. I find that the Tenant did not give sufficient notice to end the tenancy. I accept the Tenant's testimony that she could not have provided the Landlord with written notice pursuant to the provisions of Section 52 of the Act. I accept the Tenant's testimony that her only communication with the Landlord was by e-mail at the time she gave her notice to end the tenancy. However, notice to end a month to month tenancy must be given not earlier than one month after the date the Landlord receives the notice, and the day before the day in the month that rent is due. In other words, the latest date the Tenant could have provided the Landlord with notice that she was ending the tenancy effective March 31, 2012, would have been February 29, 2012. The Tenant e-mailed the Landlord on March 7, 2012, advising of her intent to end the tenancy at the end of March. Therefore, I find that the Landlord is entitled to loss of revenue for the month of April, 2012, in the amount of **\$600.00**.

With respect to the Landlord's claim for unpaid utilities, I find that the Landlord provided insufficient evidence of the amount the Tenant owes, if any. Therefore this portion of the Landlord's claim is dismissed. The Landlord provided hand written notes, calculations and receipts for hydro, but no copies of the actual hydro bills or an explanation of what the Landlord based her calculations on.

#### Set off awards

Both parties have been partially successful in their applications and I order that they each bear the cost of their applications.

Each party has been award the same amount and therefore no Monetary Orders will issue.

#### Conclusion

The Landlord has established a monetary award of **\$600.00**.

The Tenant has established a monetary award of **\$600.00**.

After setting off the awards against each other, no Monetary Order is provided to either party.

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 26, 2012.

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Residential Tenancy Branch