



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and compensation for loss for loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Preliminary Issues

At the onset of the hearing the landlord stated she is only claiming for unpaid rent and the compensation for loss of furniture. Therefore, all other items listed in the landlord's application are dismissed, and today's hearing proceeded on the above claim.

On November 30, 2011, At a Dispute Resolution hearing, the Dispute Resolution Officer ordered that the tenancy will continue unit legally ended in accordance with the Act.

On April 24, 2012, At a Dispute Resolution Hearing, the Dispute Resolution Officer granted the tenant a monetary for the return of double the security deposit paid to the landlord.

### Issue(s) to be Decided

Is landlord entitled to monetary order for unpaid rent?

Is the landlord entitled to a monetary order for compensation for loss under the Act?

### Background and Evidence

The tenancy began on September, 1, 2011. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant. The tenant vacated the rental unit on December 15, 2011.

The landlord claims as follows:

a.	Unpaid rent for December 2011	\$900.00
b.	Missing furniture from rental unit	\$2,000.00
g.	Filing fee	\$50.00
	<b>Total claimed</b>	<b>\$2,950.00</b>

The landlord testified the decision of the Dispute Resolution Officer made on November 30, 2011, ordered the tenancy to continue, as it was determined the written notice she had provided the tenant did not comply with Section 52 of the Act.

The landlord stated the tenant did not provide any notice to end tenancy after the November 30, 2011, decision and vacated the rental unit on December 15, 2011.

The tenant testified that he was not required to pay rent for December 2011, based on the 2 month hand written notice the landlord provided him on October 1, 2011. The tenant stated he vacated the rental unit on December 15, 2011.

The landlord claims the tenant has removed furniture from the rental unit without her consent. The landlord stated all rooms were furnished, however, there is no itemized list attached to the tenancy agreement. The landlord stated the furniture was at least ten years old, but was in good condition.

The landlords witness testified that before the tenancy commenced all rooms were furnished. The witness stated the furniture was at least ten years old.

The tenant testified at the start of tenancy the landlord requested that he take a few pieces of old furniture to the dump as he had a truck. The tenant stated he only removed the items requested by the landlord. The tenant stated that some of the items claimed were not there at the beginning of tenancy.

### Analysis

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

The evidence of the tenant was he was not responsible for December 2011, rent as the landlord provided him written notice to end tenancy on October 1, 2011.

However, the Dispute Resolution Officer heard the tenant's application on November 30, 2011. It was determined at that time the notice issued by the landlord was invalid and the tenancy was ordered to continue until legally ended in accordance with the Act. As a result, the tenant was required to pay rent for December 2011, in accordance with the tenancy agreement.

Under Section 26 of the Act the 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.

The tenant did not pay rent as required and the tenant did not have a right under this Act to deduct all or a portion of the rent as it was clear the tenant knew the tenancy was ordered to continue on November 30, 2011. Therefore, I find the landlord is entitled to unpaid rent for December 2011, in the amount of **\$900.00**.

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

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

In this case, the evidence of the landlord was that the tenant took furniture from the rental unit. The evidence of the landlord's witness was all rooms were furnished, however, on cross-examination the witness could not remember details of items in each room. The evidence of the tenant was he only removed certain items at the request of the landlord as they were old and were disposed off and other items claimed by the

landlord were not in rental unit at the start of tenancy. All parties agreed the furniture was a least ten years old.

I find the landlord has provided insufficient evidence to prove her claim for compensation for loss of furniture. The evidence was the furniture was at least ten years. Under policy guidelines the useful life span of furniture is ten years old, therefore the landlord has not proven a loss exists as the useful life span of the furniture has expired. Also, there was no itemized list to detail the items the tenant would be responsible for during the tenancy. Therefore, the landlord cannot prove the tenant has violated the Act or tenancy agreement. Further, the landlord did not provide any evidence of proof of the actual amount required to be compensated. As a result the landlord request for compensation for loss of furniture is dismissed.

I find that the landlord has established a total monetary claim of **\$950.00** comprised of unpaid rent and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary in the above amount.

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: July 19, 2012.

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Residential Tenancy Branch