



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC, MND, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and the tenant.

At the outset of the hearing I clarified the tenant had moved out of the rental unit and there was no longer a need for an order of possession. I therefore amend the landlord's Application to exclude matters related to possession.

The landlord noted that she received the tenant's evidence late; August 9, 2012 leaving less than 5 days prior the hearing. The landlord testified she was prepared to proceed and the hearing continued.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage or loss; and for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on December 1, 2011 as a month to month tenancy for a monthly rent of \$1,600.00 due on the 1<sup>st</sup> of each month with a security deposit of \$800.00 paid. The parties also acknowledge the tenant worked for the landlord in a separate business unrelated to the tenancy.

The landlord testified the tenant did not show up for work one day in mid June 2012 and the landlord attempted to find out if he was ok and spoke with the tenant's brother who also was a tenant in the rental unit. The landlord submits the brother indicated the tenant had decided to quit his job, but that there was no indication about the tenant's intentions to move out of the rental unit.

The landlord submits the first time they spoke to the tenant after this was on July 2, 2012 when he told them he had moved his belongings out of the rental unit and that he would not be paying rent for July 2012. The landlord testified that the tenant told the other landlord that he did not need to give notice because they did not have a written agreement. The landlord seeks rent for the month of July in the amount of \$1,600.00.

The tenant testified that he wrote a 30 day notice to his landlord on April 31, 2012 with an effective date of June 30, 2012 and that he provided it to his landlord on April 31, 2012 (copy submitted into evidence). When it was pointed out that there is no April 31<sup>st</sup> the tenant testified it must have been April 30, 2012. When it was pointed out that that would have been a 60 day notice the landlord, he agreed that he gave the landlord 60 days notice, despite the tenant's testimony and the text of the notice stating 30 day notice.

The tenant testified that after he issued the notice to the landlord the landlord continually harassed him to try to persuade him to remain in the rental unit and that by June 17, 2012 he vacated the property, because he could no longer deal with the landlord's harassment.

The landlord submitted photographic evidence of the condition of the rental unit that showed many items had been left behind such as furniture; that the unit had not been cleaned; and that there was damage to walls and floors.

The landlord testified they had to take two loads of garbage to the landfill; that the rental unit required painting and they had to hire cleaners. The landlord did not provide receipts for any of these items and/or services. The landlord seeks compensation in the amount equivalent to the security deposit of \$800.00.

The tenant submitted that he had cleaned the rental unit after he had vacated and the condition the landlord found was either the result of the other tenants; the landlords themselves; or the handyman who had recently been completing some work in the rental unit.

The tenant testified that each of the tenants had their own agreement with the landlord and they should have completed their own cleaning. When going through several of the landlord's and tenant's evidence the tenant identified specific items as being the responsibility of the other tenant or his brother (the third tenant).

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As the landlord disputes receiving a notice to end tenancy from the tenant I must consider the copy of the notice the tenant provided into evidence. Based on all of the discrepancies in the notice itself and the tenant's testimony, such as the date (April 31, 2012) and the statement that it is a 30 day notice with an effective date 60 days later I am not convinced the tenant actually drafted or provided this notice to the landlord in accordance with his testimony.

In relation to the claim for rent based on inadequate notice to end the tenancy, I find the landlord's testimony to be more credible. I therefore find the tenant failed to provide notice of his intent to end the tenancy in accordance with his obligations under Section 45 of the *Act* and as a result the landlord suffered a loss. I accept the value of that loss to be the equivalent of the amount of rent for the month of July 2012.

In relation to the landlord's claim for compensation for cleaning and repairs to the rental unit, I find the photographic evidence confirms the condition of the rental unit at the end of the tenancy. As to the tenant's assertion that they garbage and items left behind were a result of the landlord's own garbage or the handy man's I find the tenant has provided no evidence to support this claim.

Further as to the tenant's testimony that some of the items left behind and garbage was the responsibility of the other tenants, I find that since all the tenants were renting the unit under one tenancy agreement and therefore are co-tenants. Residential Tenancy Policy Guideline 13 states that co-tenants are jointly responsible for meeting the terms of the tenancy agreement and are also jointly and severally liable for any debt or damages that result from the tenancy.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As such, I find that all the tenants had a responsibility under this tenancy to ensure the rental unit was reasonably clean and undamaged at the end of the tenancy pursuant to Section 37 of the *Act*.

For these reasons I find the condition of the rental unit at the end of the tenancy was as submitted by the landlord. In relation to the landlord's claim for repairs, the landlord provided no evidence of the condition of the rental unit at the start of the tenancy and has therefore not shown the damage resulted from the tenancy.

However, in relation to the landlord's claim for cleaning and garbage removal, I find the landlord has established the tenants failed to comply with their obligations under Section 37 to leave the unit reasonably clean. As a result I also find the landlord has suffered a loss.

While the landlord has failed to provide any evidence to establish the value of this loss I find she has failed to establish the value of that loss to be in the amount of \$800.00, however I will grant the landlord nominal damages based primarily on the photographic evidence confirming the need for cleaning and garbage removal in the amount of \$250.00.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,900.00** comprised of \$1,600.00 rent owed; \$250.00 nominal damages and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$800.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,100.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: August 17, 2012.

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Residential Tenancy Branch