



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND; MNR; MNSD; MNDC; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages, unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord sent the Notice of Hearing documents to the Tenant by registered mail to her place of employment. The Tenant received the Notice of Hearing documents on October 25, 2012. The Tenant objected to being served at her place of employment and submitted that the documents were not served in accordance with the provisions of the Act. The Tenant is correct. Section 89 of the Act sets out the methods of service, and there is no provision for a party to be served by sending documents registered mail to the party's place of employment. However, I am satisfied that the Tenant received the documents and therefore I find that she was sufficiently served on October 25, 2012, in accordance with the provisions of Section 71(2) of the Act.

It was determined that the parties exchanged their documentary evidence by registered mail.

The parties 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for unpaid utilities, unpaid rent for the month of August, 2012, damages to the rental unit, and legal costs?
- May the Landlords deduct their monetary award from the security deposit?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence, which indicates that the tenancy began on December 1, 2010. Monthly rent was \$1,500.00, due on the first of the month. Rent did not include utilities. The Tenant paid a security deposit in the amount of \$750.00. The Tenant's family members also lived in the rental unit and there is a basement suite which was occupied.

#### **The Landlord gave the following testimony:**

The Landlord stated that the Tenant moved out of the rental unit without giving any notice and that when he went to the rental unit to collect rent on August 1, 2012, the house was empty and the door unlocked. He stated that the fridge handle was broken and could not be replaced, so he had to purchase a replacement fridge. The Landlord testified that the Tenants were responsible for maintaining the garden and cutting the lawn. He stated that the grass was 3 to 4 feet high and the gardens were a mess. In addition, the Tenants damaged walls, paint, carpet, laminate flooring and door locks.

The Landlord testified that the Tenant left without paying for utilities.

The Landlord stated that he had to hire a lawyer to find the Tenant because she left without providing a forwarding address.

The Landlord stated that he sold the rental property in August, 2012, at a loss of \$50,000.00.

The Landlord seeks a monetary award, calculated as follows:

Description	Amount
Loss of revenue for August, 2012	\$1,500.00
Unpaid utilities	\$434.56
Replacement of fridge	\$300.00
Cost of returning landscaping to acceptable standards	\$800.00
Cost of repairing damages	\$5,000.00
Legal account	<u>\$400.00</u>
<b>TOTAL MONETARY CLAIM</b>	<b>\$8,434.56</b>

The Landlord provided the following documentary evidence:

- Copy of tenancy agreement;
- Copy of demand letter to Tenant from Landlord's lawyer;

- Copy of utility bill; and
- Copy of hand written receipt for cost of repairs

The Tenant gave the following testimony:

The Tenant disputed all of the Landlord's claim.

The Tenant stated that the tenancy ended by mutual agreement on July 31, 2012. She testified that the Landlord came to visit the Tenant at the end of May, 2012, and stated that he had sold his current residence and wanted the Tenant and her parents to move out so that he could move in. The Tenant stated that the Landlord wanted them to move by June 30, 2012, but the Tenants agreed to move out on July 31, 2012, at 1:00 p.m. The Tenant testified that the parties signed an end of tenancy agreement, but she lost it in the move.

The Tenant testified that on July 31, 2012, the Landlord came to the rental unit on July 31, 2012, at 1:00 p.m. and did a "walk-through" of the rental unit. She stated that the Landlord found it to be in reasonable condition and returned the security deposit, less \$100.00 for outstanding utilities.

The Tenant provided the following documentary evidence:

- Copies of bank statements with comments attached;
- Copy of on-line ad dated May 28, 2012, entitled "Rent to own or buy";
- Copy of utility bill; and
- Written statement of the occupant who lived in the basement suite.

The Tenant's witness gave the following testimony:

The witness is the Tenant's daughter and also lived in the rental unit. She stated that they were aware that the Landlord wished to sell the house because he kept asking them to buy it. The witness stated that her mother moved out of the rental unit 2 weeks before the end of July, 2012, and that the witness was the last one to move out. The witness testified that the Landlord returned the security deposit in cash, and that her mother gave her \$150.00 of it to repay her for her portion of the security deposit.

The Landlord gave the following reply:

The Landlord acknowledged that he placed the on-line ad on the internet, but stated that he removed it because the Tenant said she wanted to stay. He denied having a mutual agreement to end the tenancy on July 31, 2012. The Landlord stated that in August, 2012, he moved, but did not move into the rental unit and never had any intention of moving into the rental unit.

## **Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

There is no provision in the Act for recovery of the cost of legal fees and this portion of the Landlord's claim is dismissed.

I find on the balance of probabilities that the Landlord has not proven his claim for the following reasons:

- The Landlord stated that he was unaware that the Tenants were moving at the end of July, 2012, and that there was no mutual agreement that the tenancy would end on July 31, 2012. The Tenant, her witness, and the written statement of the other occupant all stated that the Landlord attended at the rental unit on July 31, 2012, determined that the rental unit was in satisfactory condition, and returned the security deposit.
- Both parties provided a copy of the same utility bill in evidence, from the City of Abbotsford for water and sewer, in the amount of \$217.28. The Landlord did not provide any other utility bill to explain how he arrived at the sum of \$434.56 (double the amount of the utility bill). The Tenant's bank statement indicates that a payment of \$117.28 was debited to her account on August 13, 2012, for "Abbotsford – Tax". \$117.28 plus the \$100.00 the Landlord withheld from the security deposit on July 31, 2012, totals \$217.28.
- The bank statements also indicate that the Tenant deposited \$500.00 to her account on July 31, 2012. This amount is the same as the amount that would have been left from the security deposit refund, after deducting \$100.00 for utilities and after providing her daughter with \$150.00 for her share of the security deposit paid. I find it unlikely that the Landlord would have returned the security deposit if there was damage to the unit, or if he believed he was entitled to unpaid rent for the month of August, 2012.
- There was no Condition Inspection Report completed that complies with requirements of the Act and the regulation, at the beginning or the end of the tenancy. There were no photographs provided depicting the condition of the rental unit at the beginning or the end of the tenancy. Therefore I find that the Landlord did not provide sufficient evidence that the Tenants damaged the fridge, walls, paint, carpet, laminate flooring and door locks. Neither did he provide sufficient evidence that the Tenants did not leave the lawn and gardens in reasonable condition.

For the reasons set out above, I dismiss the Landlord's application in its entirety.

**Conclusion**

The Landlord's application is **dismissed 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: February 05, 2013

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Residential Tenancy Branch

