



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, CNR, MNR, MNSD, MNDC, FF

### **Introduction,**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in satisfaction of his claim. The tenant applied to cancel the notice to end tenancy and for a monetary order for compensation for loss under the *Act* and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant informed me that she was in the process of moving out. The landlord agreed that an order of possession was not necessary.

Accordingly this hearing only dealt with the landlord's application for a monetary order for unpaid rent and for the filing and the tenant's application for compensation and the filing fee.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Is the tenant entitled to a monetary order for compensation and the filing fee?

### **Background and Evidence**

The landlord and tenant entered into a tenancy agreement on August 15, 2012 for a fixed term ending February 15, 2013. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs. The basement contains four bedrooms. The tenant entered into a rental agreement to rent two bedrooms for \$900.00 per month. A copy of the rental agreement was filed into evidence. Prior to moving in the tenant paid a security deposit of \$450.00 and a pet deposit of \$450.00.

The tenant testified that there was no door to separate the area that she had rented and the remainder of the basement. The landlord had agreed to install one prior to the start of the tenancy.

The tenant testified that upon moving in, she found that the door had not been installed. The tenant stated that she asked the landlord the reason for not installing the door as promised. The landlord informed her that construction had stopped for financial reasons. The landlord agreed that he had not installed the door which would separate the two bedroom unit from the remainder of the basement.

The landlord suggested to the tenant that if she knew of someone who could share the basement with her, he would give her a break on the rent for the remainder of the basement. The tenant's sister decided that she would rent one room of the basement. The tenant requested the landlord to do this on a trial basis. The tenant paid a total of \$1,600.00 with the additional tenant.

The shared rental situation did not work out and the tenant's sister moved out at the end of September. The tenant testified that she requested the landlord to install the door as she could not afford to pay rent for the additional space if there was no roommate. The landlord declined and informed the tenant that she should provide three months' notice to end the rental of the additional space. The landlord suggested that she find a student to share rent with.

The tenant was unable to find a roommate for October. The tenant testified that for fear of losing the tenancy, she paid the landlord \$1,600.00 for October's rent. At the end of October, the tenant found a student who agreed to move in. The landlord met with the student and her father and they discussed the terms of the tenancy. The landlord agreed to allow the student to move in. The tenant stated that the student paid \$650.00 for room and board but she had to continue to pay the landlord \$1,600.00 for rent.

The tenant stated that the landlord was informed that the student needed accommodation until the end of the school term in March. Despite this, in November the landlord requested the tenant to ask the student to move out in December, because he needed the extra space for a home office and for a play area for his children.

The tenant described the living situation through the tenancy, as tense. She stated that the landlord never gave her any notice to enter the unit and visited at will or sent his children to knock on her door and ask her to come upstairs to meet him. The tenant stated that the landlord saw her brother smoking on the property and requested him not to do so. The tenant filed a copy of a text message to the landlord apologizing for the incident.

The tenant's brother testified that some time later he listened to a conversation on speaker phone between the tenant and the landlord's wife, during which the landlord's

wife advised the tenant that her brother was not permitted to visit. The tenant stated that the landlord constantly monitored her visitors and made them feel unwelcome.

In an email dated January 03, 2013, the landlord confirmed that they would not be able to rent out the basement after the City municipality was informed of the presence of the basement suite. The landlord added that he had no intention of renting it out after the tenant moved out because he needed the basement for his personal use. In December 2012, the landlord informed the tenant that he would not be renewing the lease after it expired on February 15, 2013.

The landlord stated that the tenant paid \$1,600.00 starting September 2012 and therefore was required to pay this amount for the remainder of the term of the tenancy. The landlord agreed that the tenancy agreement was entered into for a two bedroom rental unit at \$900.00 per month. The tenant paid \$450.00 for half the month of August at the start of the tenancy. Both parties agreed that there was no written contract or terms in the existing tenancy agreement regarding the rental of the extra space in the basement.

The tenant testified that if the landlord had installed the separating door as promised, there would not have been any issues regarding rent for the remainder of the basement.

The landlord stated that the tenant paid only \$1,500.00 for December and owes \$100.00. The landlord stated that the tenant owes \$1,600.00 for rent for January and \$1,600.00 for the loss of income he would suffer in the month of February.

The tenant is claiming the return of rent paid in the amount of \$700.00 for each of the months of September to December. The tenant stated that she believed that she had overpaid rent and she also wanted to be compensated for the loss of quiet enjoyment.

The tenant agreed that she had not paid rent for January. She stated that the student paid \$200.00 for December and \$200.00 for January which was for boarding. The tenant stated that she believed that she had over paid rent for four months and therefore she withheld rent for January.

### **Analysis**

Based on the testimony and documentary evidence of both parties, I find that the parties entered into a tenancy agreement to rent the two bedroom suite in the basement for \$900.00 per month. The rent for the remainder of the basement was decided upon by a verbal agreement between the parties.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the landlord has the onus of proving, during these proceedings, that the claim for monthly rent in the amount of \$1,600.00 is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will likely not prevail.

The tenant testified that she was coerced into finding a roommate when the landlord failed to install a door that would separate the suite from the remainder of the unit. She also stated that she entered into a rental agreement for a two bedroom suite because she could not afford to rent a larger unit.

The tenant agreed to having received rent from the tenant's sister for September and \$650.00 for room and board for November, and \$200.00 for board only for the months of December and January. The tenant did not receive any additional rent for October because she did not have a roommate. However for October the tenant paid rent in the amount of \$1,600.00.

I find that the landlord is entitled to the rent received by the tenant from roommates for the additional space. The tenant received the following rent from roommates:

September	\$700.00
October	\$0.00
November	\$650.00
December	\$200.00
January	\$200.00
<b>Total</b>	<b>\$1,750.00</b>

The tenant paid a total of \$2,700.00 in excess of the rent of \$900.00 per month that she owed the landlord as per the rental agreement. The tenant received from roommates \$1,750.00 over the term of the tenancy. Therefore, I find that the landlord owes the tenant the difference of \$950.00.

The parties were in a fixed term tenancy agreement and the tenant breached this agreement by not paying rent for January which resulted in a notice to end tenancy prior to the end date as specified in the tenancy agreement. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. The end date of the fixed term is February 15, 2013. Therefore I find that the landlord is entitled to rent for January and half of February for a total of \$1,350.00.

The tenant has established a claim of \$950.00 which consists of the difference in the amount of rent she received from roommates and the amount that she paid to the landlord in excess of \$900.00 per month.

The landlord also has in his possession \$900.00 for security and pet deposits. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$500.00 which consists of the difference between the entitlements of the parties, to which the return of the deposits is applied.

Landlord's entitlement	\$1,350.00
Tenant's entitlement	\$950.00
Difference owed to landlord	<b>\$400.00</b>
Deposits held by landlord	\$900.00
Difference owed to tenant	<b>\$500.00</b>

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$500.00**. Since both parties were partially successful in their claims, they must bear the cost of filing their own application.

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: January 29, 2013

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Residential Tenancy Branch

