



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent and loss of rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

I confirmed that the tenant no longer occupies the rental unit and an Order of Possession is no longer required.

After filing this application and prior to the hearing date the landlord served evidence packages upon the Branch and the tenant that appeared to include evidence pertaining to a damage claim; yet the landlord had not amended her Application for Dispute Resolution to indicate she was seeking specific amounts for damage. The landlord also indicated that the total costs to repair damage have not yet been determined.

I informed the parties that I would proceed to consider the landlord's monetary claims with respect to unpaid rent and/or loss of rent for the months of January and February 2013. The landlord is at liberty to file another Application for Dispute Resolution seeking compensation for damage or other losses once her losses are determined. I did not consider the landlord's claim for loss of rent for March 2013, as claimed, since a loss has not yet been incurred. I dismiss the landlord's claim for loss of rent for March 2013 with leave to reapply and she is at liberty to include such a loss in a future damage claim, if appropriate.

Issue(s) to be Decided

1. Is the landlord entitled to unpaid rent and/or loss of rent for the months of January and February 2013 and if so, what is the amount the landlord is entitled to receive?
2. Disposition of the security deposit.

Background and Evidence

The tenant began occupying the rental unit in October 2011 with a former co-tenant and the landlord collected a security deposit of \$825.00. Starting February 1, 2012 a new tenancy agreement was entered into between the tenant and the landlord. The tenant was required to pay rent of \$1,650.00 on the 1<sup>st</sup> day of every month. After July 2012 the tenancy went to a month-to-month basis.

The tenant rented the entire house which included a main level accommodation and a basement suite. Starting in April 2012 the tenant primarily resided in the basement suite and rented the upper unit to others.

The tenant paid \$725.00 in rent for the month of January 2013. The tenant was unable to pay the remaining \$925.00 due to her lack of income and sub-tenants in the upper unit reneged on their agreement with the tenant. The tenant verbally notified the landlord of her inability to pay all of the rent owing. The tenant stated that she notified the landlord on December 27, 2012. The landlord stated that she was notified on January 2, 2013.

On January 3, 2013 the landlord met with the tenant. The landlord and tenant had a discussion about the landlord accepting a lesser amount of rent to keep the tenancy going. The amount the landlord verbally indicated she would accept was in dispute. The tenant stated the landlord agreed to accept \$1,000.00 at the time. The landlord denied that, stating she likely proposed \$1,450.00 and then a lower amount of \$1,250.00.

It was undisputed that the landlord gave the tenant two letters: one dated January 13, 2013 and the second dated January 19, 2013. In both letters the landlord proposes a lesser amount of rent, in varying amounts, in exchange for the tenant removing her possessions from the upper unit and allowing the landlord to commence repairs. The landlord requested the tenant's written agreement to the proposals and provided space on the documents for the tenant to indicate whether she was in agreement with the

proposed terms. The tenant did not sign the documents as she did not agree with the terms proposed.

Without a signed agreement with the tenant, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on January 20, 2012. The Notice indicates the tenant failed to pay rent of \$1,650.00 as of January 1, 2013 with a notation that there was a payment of \$725.00 received. The Notice had an effective date of January 30, 2013.

The tenant and her children and the majority of the tenant's possession were moved out of the house at the end of January 2013 although some possessions remained. The tenant and/or a support worker returned to take several loads to the dump on February 2, 2013. The tenant removed her van from the property February 16, 2013. Some possessions, such as children's toys, remain in the back of the property.

The landlord is seeking unpaid rent of \$925.00 for the month of January 2013 and loss of rent of \$1,650.00 for the month of February 2013.

The tenant acknowledged her responsibility to pay the rent for the entire house, as per her tenancy agreement, even though the sub-tenants left her without sufficient funds. However, the tenant submitted that she should be held responsible for the lesser amounts of rent the landlord was offering in their verbal discussions in early January 2013. The tenant objected to being held responsible for the full amount of rent for January 2013 since the landlord had brought tools and supplies into the upper unit, asked the tenant to remove her possessions from the upper unit, and entered the unit, on one occasion, without the tenant's consent.

The landlord was of the position she had obtained the tenant's consent to enter the upper unit on every occasion, except perhaps one time. The landlord acknowledged suggesting to the tenant that she remove her possession from the upper unit so that she could commence repairs, in anticipation that the tenant would accept the proposals captured in the documents of January 13, 2013 and January 19, 2013. On January 20, 2012, when it was clear the tenant was not agreeable to the terms proposed by the landlord, the landlord removed her tools and supplies from the upper unit.

Discussion ensued about a landlord's obligations to gain a tenant's consent before entering a rental unit or giving the tenant a written 24 hour notice; and, the tenant's protected right to use and enjoy the rental unit exclusively until their tenancy legally ends. The landlord was agreeable to a rent reduction of \$100.00 to take into account

her limited use of the upper unit and the tenant's loss of use and enjoyment of the upper unit.

### Analysis

A tenant is required to pay rent in accordance with the terms of their tenancy agreement. A tenant is not entitled to withhold rent unless the tenant has a legal right to do so under the Act, or has the landlord's agreement for a lesser amount. In this case, I find the disputed verbal testimony regarding discussions that took place on January 3, 2013 to be insufficient to conclude the landlord had verbally agreed to accept \$1,000.00 from the tenant for January 2013 without any concessions on part of the tenant. Rather, I find there is clear documentary evidence that the landlord was proposing lesser amounts of rent in exchange for the landlord's right to use the upper unit and the tenant's removal of her possessions. Although the tenant was within her right to reject the proposals made to her, in the absence of an agreement between the parties that would alter the terms of the tenancy agreement, I find the terms of the tenancy agreement remain intact.

Taking into account the landlord's limited use of the upper unit in January 2013 and the tenant's minimal loss of use and enjoyment of the upper unit, I reduce the amount of rent payable for January 2013 by \$100.00 as agreed by the landlord during the hearing.

In light of the above, I find the tenant obligated to pay the landlord the remaining balance of \$825.00 for the month of January 2013 [\$1,650.00 – \$725.00 – \$100.00].

With respect to the month of February 2013, I find the landlord entitled to recover \$1,650.00 from the tenant for loss of rent. I make this finding on the following basis:

- A tenant must give a landlord at least one full month of written notice to end their month-to-month tenancy and end their obligation to pay rent. The tenant did not give the landlord proper notice to end the tenancy effective at the end of January 2013; and,
- Several of the tenant's possessions and/or garbage remained on the property in February 2013.

I award the \$50.00 filing fee to the landlord. I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord.

The landlord has been provided a Monetary Order calculated as follows:

|                              |                 |
|------------------------------|-----------------|
| Unpaid rent – January 2013   | \$ 825.00       |
| Loss of rent – February 2013 | 1,650.00        |
| Filing fee                   | 50.00           |
| Less: security deposit       | <u>(825.00)</u> |
| Monetary Order               | \$1,700.00      |

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court to enforce as an Order of the court.

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,700.00 to serve upon the tenant and enforce as necessary.

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 22, 2013

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Residential Tenancy Branch

