



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation 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.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation under the Act?

### Background and Evidence

The tenancy began on June 15, 2009. Rent in the amount of \$725.00 was payable on the first of each month. A security deposit of \$350.00 was paid by the tenant. The tenancy ended on August 1, 2012. The tenant acknowledged the security deposit has been returned.

The tenant stated she was served with a one month notice to end tenancy with an effective vacancy date of August 1, 2012. The tenant stated she did not dispute the notice, but no longer feels it was justified. The tenant seeks three months of rent compensation and moving expenses for the illegal eviction.

The landlord stated the tenancy ended legally in accordance with the Act.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove.

Based on the testimony of tenant, I find that the tenant was served with a notice to end tenancy for cause. The notice informed the tenant that the tenant had fifteen days to dispute the notice. The tenant acknowledged she did not dispute the notice and vacated the rental unit.

*Section 47 (5) of the Act states:*

- 5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) must vacate the rental unit by that date.*

In this case, the tenant is seeking compensation as she no longer agrees with the notice to end tenancy for cause, however, the tenant was required to make an application for dispute resolution within 15 days of receiving the notice.

The tenant did not make an application to dispute the notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice.

As a result, I find the tenancy ended in accordance with the Act. I find the tenant has failed to prove the landlord has violated the Act. Therefore, I dismiss the tenant's application for compensation under the Act.

Conclusion

The tenancy ended in accordance with the Act. The tenant's application for monetary compensation is dismissed.

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

