



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNR

### Introduction

This hearing dealt with an application by the landlord seeking a monetary order. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

### Background and Evidence

The tenancy began on or about December 15, 2011. Rent in the amount of \$1030.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$515.00 which has been dealt with in a previous hearing. The tenant failed to pay rent in the month(s) of November and on November 14, 2012 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of December.

The landlord gave the following testimony:

The tenant moved out of the unit on December 3, 2012. The tenant did not provide written notice nor did she inform the landlord that the unit had been vacated. The landlord happened to visit the property on that day to find it had been abandoned. The landlord spent time cleaning and repairing the unit in attempts to make it suitable for rental. The landlord made all attempts to re-rent the unit but to no avail. The landlord is

seeking the unpaid rent for November and the loss of revenue for the month of December as he was unable to rent it.

The tenant gave the following testimony:

The tenant stated that in late October 2012 she had given verbal notice to move out of the unit in by November 30, 2012. The tenant had a witness give testimony who “believed that notice was given on the 29<sup>th</sup>, or 30<sup>th</sup>, or 31<sup>st</sup> of October to be out by November 30, 2012”. The witness stated that he “moved her out of there by the 30<sup>th</sup> of November”. The tenant acknowledges that she did not pay the rent but feels she was justified as” the landlord had not provided heat for over four months”.

### Analysis

The relationship between these two parties is an acrimonious one. This is the second hearing that involved these two parties with the tenant advising that she will be seeking a judicial review based on the landlords’ bullying and fraudulent behaviour in regards to the previous hearing. A great deal of time was spent explaining to both parties that today’s decision would deal solely with the application before me. Both parties made several references to other issues that are not before me. It was explained that if either party has an issue that cannot be resolved they are at liberty to file a separate application for a dispute resolution hearing to have their matter heard. Both parties acknowledged that they understood.

The tenant acknowledged that she withheld the rent without an order from the Residential Tenancy Branch or an agreement with the landlord. The tenant acknowledged that written notice was required but didn’t know where to serve the landlord and felt that by telling him on the phone it was sufficient.

The tenant acknowledged in her own testimony that she did not give written notice and that she arbitrarily withheld the rent.

The following sections of the Act deal directly with both of those issues.

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find the testimony of the landlord to be compelling, consistent and concise. I accept that the tenant did not provide any notice as to when she was vacating the unit thus preventing the landlord to carry out his duties in attempting to mitigate his losses and try to re-rent the unit. I find that the landlord is entitled to the unpaid rent of November 2012 and the loss of revenue for December 2012 for a total of \$2060.00.

The landlord was seeking \$350.00 for a replacement stove and \$60.00 for replacement blinds. As the landlord has not provided any documentation or evidence of any actual “out of pocket costs” I dismiss this portion of his application.

As for the monetary order, I find that the landlord has established a claim for \$2060.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$2110.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$2110.00.

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: March 26, 2013

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Residential Tenancy Branch

