



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on February 19, 2103, to obtain a Monetary Order for; unpaid rent; other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Has the Landlord filed this application within the timeframes stipulated in the *Residential Tenancy Act*?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: an unsigned tenancy agreement; his written statement; Canada Post registered mail tracking information; e-mails between the parties; and a monetary order worksheet.

The following facts were confirmed during this proceeding and were not in dispute:

- The parties originally entered into a fixed to tenancy agreement that began on May 5, 2009 and was set to end on May 31, 2010;
- Rent was payable on the first of each month in the amount of \$5,000.00
- The Tenant paid \$2,500.00 as a security deposit on or before May 5, 2009;
- The parties attended a walk through inspection on May 5, 2009 however no move in condition inspection form was completed;
- The Tenant vacated the property on or before February 15, 2013;
- The parties attended a move out inspection on February 15, 2013, and signed off stating everything was okay with the rental unit;
- All parties agreed that another tenant would commence a new tenancy and she took possession of the rental unit on February 15, 2013 after completion of the inspection;
- As per agreement with the Landlord the new tenant wrote this Tenant a cheque in the amount of \$2,500.00 as her payment of the security deposit and as refund to this Tenant's security deposit;
- The Landlord credited the new tenant as paying a security deposit of \$2,500.00.

The Landlord and his Agent submitted that due to some mix up the Tenant's post dated cheques for rent payments for November 2010, December 2010, January 2011, and February 2011 were never cashed. They have recently attempted to collect the past due rent from the Tenant however she has not provided them with the payment.

The Tenant confirmed that she has not obtained proof that the payments were withdrawn from her account. She argued that the Landlord's application was filed too late because he made his application on February 19, 2013, which is more than two years since her tenancy ended on February 15, 2013. She noted that the Landlord waited almost a year before he first contacted her about this situation.

The Landlord and his Agent argued that the tenancy did not end until the end of February 2011 because they had an agreement that the Tenant was responsible for February's rent and because they did not enter into a written tenancy agreement with the new tenant until March 1, 2011. They confirmed that they did not provide a copy of the new tenancy agreement as evidence.

In closing, the Landlord confirmed that the new tenant took occupancy of the rental unit on February 15, 2011 after the Tenant's move out inspection was completed and she did not begin paying rent until March 1, 2011. When asked why he delayed in making

this application the Landlord stated that they were friends and friends do not go after friends for money right away.

### Analysis

Section 44 (1)(d) of the *Act* stipulates that a tenancy ends when the tenant vacates or abandons the rental unit.

In this case, the undisputed evidence is the Tenant vacated the rental unit on or before February 15, 2011; the parties attended a move out inspection on February 15, 2011; and the keys and possession of the rental unit were handed over to the new tenant on February 15, 2011.

Based on the foregoing, and notwithstanding the Landlord's argument that the new tenant did not begin to pay him rent until March 1, 2011, I find that this tenancy ended on February 15, 2011, in accordance with section 44(1)(d) of the *Residential Tenancy Act*.

Section 60(1) of the *Act* stipulates that if this *Act* does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned [emphasis added].

Therefore, I find that the Landlord had to file his application on or before February 14, 2013. In this case the Landlord filed his application on February 19, 2013, which I find to be outside of the timeframes stipulated in Section 60(1) of the *Act*. Accordingly, I dismiss the Landlord's application, without leave to reapply.

### Conclusion

I HEREBY DISMISS the Landlord's application, 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: May 15, 2013

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Residential Tenancy Branch

