



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR CNR MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent;
- e) For a return of the security deposit pursuant to section 38;
- f) An Order that she might obtain a free month's rent for May pursuant to sections 49 and 51,
- g) A monetary order as compensation for paint supplies; and
- h) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated May 2, 2013 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

The tenant vacated the unit on June 1, 2013 so no Order of Possession is necessary. Has the landlord proved on the balance of probabilities that the tenant owes unpaid rent and the amount? Is the landlord entitled to recover filing fees also?

Has the tenant proved on the balance of probabilities that she is entitled to compensation for one month's rent pursuant to sections 49 and 51 of the Act, to the refund of her security deposit and to compensation for supplies bought to paint the property? Is she also entitled to recover filing fees for the application?

**Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. There were a number of disagreements about the oral agreements between the parties. However, it was undisputed that the tenancy commenced in June 2012, that rent was \$1200 a month and a security deposit of \$600 was paid on May 13, 2012. It is undisputed that the tenant operated a daycare business in about 50% of the home; the daycare was in the 973 sq. ft basement and she lived upstairs in 1075 sq. ft. She said her primary purpose was to live in the home and not just to run the business. It is undisputed that the tenant did not pay rent for May 2013 and vacated on June 1, 2013. The landlord claims \$1200 in unpaid rent. The landlord said that there was never a "For Sale" sign on the property and the tenant was never given a Notice to End Tenancy for landlord's use of the property but rather was given a 10 day notice for unpaid rent.

The parties agreed after discussion that the tenancy originally commenced on a three month trial basis to see how it went but at the end of the three months, both parties were somewhat unhappy, the landlord because of issues with the painting and yard care and the tenant with the lack of full compensation for the paint and supplies as promised. After the discussion about their mutual issues, the tenant said she asked for a written tenancy agreement but the landlord refused to supply one and it was "just left out there". The tenant said in her opinion, she had a long term tenancy of one to three years but agreed there was no fixed term or length agreed at the time. The landlord and tenant agreed that the landlord approached the tenant in January 2013 and said she was planning to sell the property but the landlord said she advised the tenant of her possible right to continue her lease agreement with a new owner at that time. The tenant said the landlord never told her that and in April 2013, she found another home to rent so her business would not be jeopardized. The realtor for the landlord emphasized that the tenant was not evicted; the property was not listed until after the tenant found another home on April 4, 2013 and her rent cheque for April was returned NSF. The landlord said she only told the tenant in January 2013 of her possible intention to sell so the tenant would have some advance notice of what was happening. The tenant told her she would leave June 1, 2013 and she did, although the keys have not been returned yet. The tenant said they are on the counter and the realtor said he would go and find them.

The tenant claims compensation of one month free rent of \$1200 pursuant to sections 49 and 51 of the Act as the landlord was taking the property again for her own use. She said she relied on the landlord's promise when she rented not to list it for sale as her business needed the premises. In her application, the tenant also claims \$600 refund of

her security deposit and \$592.58 for compensation for painting supplies. The parties agreed that the landlord had told the tenant and her sister that they could paint the premises and she would reimburse them for the materials, the landlord said she had said and meant “the paint” but the tenant submitted an invoice for about \$1100 for paint and supplies including paint brushes etc. She said that they had held themselves out to be professional painters and as such, they should have had their own supplies. However, the parties agreed that the tenant received a \$600 rent reduction in July 2012 plus another reduction in August 2012. Neither party could remember the reduction in August but eventually agreed that it was probably about \$200. The lawyer for the tenant was somewhat surprised as he had thought there was no reimbursement when the evidence was submitted. Invoices in evidence total \$592.58.

In evidence is the Notice to End Tenancy for unpaid rent, a sworn Affidavit from the sister who helped paint the premises, a listing agreement dated April 17, 2013 to list the property for sale, an agreement with the same realtor dated April 15, 2013 to find a tenant for the property at a fee and a copy of an NSF cheque for May 2013.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

**Jurisdiction:** After questioning the parties regarding business and residential use of the property, I accepted that it was primarily used for residential purposes and assumed jurisdiction to hear the matter.

**Monetary Order:**

As pointed out in the hearing, the onus is on each applicant to prove on a balance of probabilities their claim. Based on the agreed facts of the oral agreements, I find there was no fixed term tenancy. I find although the tenant was of the opinion that her tenancy was long term, she agreed that after the three month trial period and discussion, the parties were frustrated and the future of the agreement was ‘just left out there’. I further find that although the landlord discussed her idea of listing the property in January 2013, she never told the tenant that she would be evicted and there was never a “For Sale” sign on the property which might have jeopardized the tenant’s business of daycare.

Although the tenant claims she should have one month’s free rent for May 2013 based on the provisions of sections 49 and 51, I find there was not a Notice to End Tenancy served on the tenant for landlord’s use of the property. Although, the tenant maintains that she was never told in January that her tenancy might continue under a new buyer

and by the time she was informed in April, she had already committed to rent another property, I find there is no obligation in the Act on landlords to inform the tenants of their legal rights; the public is expected to know the law. As I find the evidence credible that the landlord did not legally end the tenancy for her use of the property, I find the tenant owes the landlord rent for May 2013 in the amount of \$1200 when she was occupying the property.

On the tenant's application, the onus is on her to prove her claim on the balance of probabilities. She claims \$1200 in free rent for May, \$600 for the return of her security deposit and \$592.58 for compensation for paint and supplies. As set out above, I find her not entitled to free rent in May. I find the tenant has not returned the keys and not provided her forwarding address in writing to the landlord so I find it premature to award her the return of her security deposit. The landlord did not apply in this application to retain the security deposit to offset the amount owing so the parties were advised of the 15 day period set out in section 38 to deal with the deposit.

In respect to the claim for compensation for paint and supplies, I find the evidence is that the parties agreed that the tenant would be compensated for the paint supplies but not the labour. Although there was difficulty in the parties remembering the exact compensation that has already been received, I find the preponderance of the evidence is that the landlord allowed deductions of \$600 in July and \$200 in August 2013 and there was an invoice provided to her for about \$1100. The tenant's sister's affidavit states that the invoices attached for \$592.58 were the cost of the supplies she purchased and the tenant provided no other invoices to show an increased amount. I find the preponderance of the evidence is that the cost was \$1100 for paint and supplies and the tenant has received \$800 in compensation. I find compensation of a further \$300 is credible and supported by the oral evidence of both parties. I find her entitled to \$300 and I find insufficient evidence to support her claim for further compensation.

**Conclusion:**

I find the tenant entitled to compensation of \$300 and give her leave to reapply for the return of her security deposit after the later of the tenancy ending and her supplying her forwarding address in writing to the landlord. I find she is entitled to recover filing fees for her application as it had some merit.

I find the landlord entitled to a monetary order as calculated below. I find her entitled to recover the filing fee for her application.

Calculation of Monetary Award:

Unpaid rent for May 2013	1200.00
Filing fee for landlord's application	50.00
Less compensation owed to tenant	-300.00
Less filing fee to tenant	-50.00
Total Monetary Order to Landlord	900.00

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: June 06, 2013

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Residential Tenancy Branch

