



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP MEDALLION REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MNR, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent and the filing fee and to retain the security deposit in satisfaction of her claim. The tenant applied for the return of the security deposit, for compensation for loss under the *Act* and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to the return of the security deposit, compensation and the filing fee?

### **Background and Evidence**

The tenancy started on February 01, 2012 and ended on April 15, 2013. The monthly rent was \$800.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$400.00. The rental unit consisted of a suite located in the lower level of the home. At the start of the tenancy, the owner lived upstairs. In June 2012 the owner moved out and a new occupant moved in.

The tenant stated that from the start of the tenancy she shared the landlord's internet, had parking in the driveway and was able to store her belongings in a portion of the garage. The landlord stated that she agreed to allow the tenant these services as a gratuitous gesture and not as part of the tenancy agreement.

When the landlord moved out in June 2012, the new occupant did not agree to allow the tenant the use of his internet or to park in the driveway. The tenant continued to store her items in the garage but had difficulty getting access to them.

The tenancy agreement states that the storage and parking are included in the rent but does not provide details. The landlord stated that storage is available inside the suite and she provided extra storage in the garage as a favour to the tenant. The landlord added she also allowed storage in the garage as a favour and it was not reasonable to ask the new occupant to share the garage because it has direct access to his suite.

In a new agreement entered into on June 09, 2012, cable and internet are included in the rent. The landlord stated that the tenant provided inaccurate information to the agent who wrote it in without checking with her. Later, the parties communicated by text message regarding payment for the internet and the tenant stated that she agreed to pay for her internet because she did not have a choice.

The tenant stated that she parked in the driveway until June 2012, when the new occupant moved in and stopped her from doing so. The tenant stated that she had to look for street parking and on occasion was forced to park a few blocks away from home. The tenant stated that she did not feel safe walking back home alone.

The tenant is claiming moving costs because she stated that she would not have moved if she was provided with the services that were promised to her. She is also claiming compensation for the stress associated with the loss of services like internet, parking and storage and having to deal with the new occupant of the upstairs suite.

On March 14, 2013 the tenant gave the landlord written notice to end the tenancy effective April 15, 2013. The tenant stopped payment on her rent cheque for April 2013. The landlord is claiming rent for the month of April in the amount of \$800.00.

The tenant is claiming the following:

1.	Cost of internet for 10 months	\$335.90
2.	Parking for 9 months	\$720.00
3.	Storage for 3 months	\$186.00
4.	Moving costs	\$147.95
5.	Mailing costs	\$13.33
6.	Stress	\$3,600.00
7.	Filing fee	\$100.00
	Total	<b>\$5,103.18</b>

## **Analysis**

### **Landlord's application:**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case, rent is payable on the first of the month and the tenant gave notice on March 14, 2013. The earliest the tenant could end the tenancy with a notice given on this date was May 01, 2013. Therefore pursuant to section 45, the tenant did not give the landlord adequate notice to end the tenancy, and is responsible for rent for the full month of April 2013.

Accordingly, I find that the landlord is entitled to **\$800.00**.

Since the landlord has proven her case she is also entitled to the recovery of the filing fee of **\$50.00**.

Overall the landlord has established a claim of \$850.00.

### **Tenant's application:**

Based on the testimony of both parties, I find that the problems presented by the tenant for which she is requesting compensation, started in June 2012, when the owner of the rental unit moved out and the new occupant moved in. The tenant continued to occupy the rental unit until April 15, 2013 without making application to resolve these issues.

The testimony of both parties was contradictory. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant stated that internet was included in the rent but also stated that she agreed to pay for it via text message to the landlord. Therefore I find that the tenant is responsible for the cost of her internet usage.

The tenant did not have any documentation to support her claim that parking on the driveway and storage in the garage were included in the rent. Even though these services were included in the rent, the details are not specified in the tenancy agreement. The tenant stated that the parties had a verbal agreement.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

For this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms and I find that this portion of the tenant's application must be dismissed.

The tenant decided to move of her own free will and therefore is responsible for her moving costs. Accordingly the tenant's claim for moving costs is dismissed.

The legislation does not permit me to award any litigation related costs other than the filing fee.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. In regard to the tenant's monetary claim, I have reviewed the submissions of both parties and it is my determination that the tenant did not take advantage of the option that was available to her to apply for dispute resolution during the tenancy. The tenant continued to reside in the rental unit for about 10 months under conditions she describes as stressful. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for loss of quiet enjoyment and stress. I therefore dismiss this portion of the tenant's application.

The tenant has not proven her claim and therefore must bear the cost of filing her application.

The landlord has established a claim of \$850.00. I order that the landlord retain the deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$450.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of **\$450.00**.

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: July 09, 2013

---

Residential Tenancy Branch

