



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC, CNR, OPC, OPR, MND, ET, O, MNSD, MNDC, MNR, FF

### **Introduction**

The hearing was convened to deal with an application by the tenant disputing a 10-Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause issued by the landlord, both dated June 6, 2013.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$2,400.00 for rent, addition occupants and loss of rent plus reimbursement for the \$50.00 fee paid for the application. Although the landlord's application, which was filed on June 17, 2013, did not include any monetary claim for repairs, the landlord was also seeking to amend their application to include a claim for compensation for damages and loss relating to the condition of the suite.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence properly served, but only evidence that is relevant and material to the issues under dispute are described in this decision.

### **Preliminary Matters**

#### **Tenant's Application**

At the outset of the hearing the tenant advised that she had vacated the rental unit on July 1, 2013, pursuant to a Two Month Notice to End Tenancy for Landlord's Use. The tenant testified that she did not pay rent for the month of June because the Act requires that the landlord pay the tenant the equivalent of one month rent when a 2-Month Notice is issued under s49 of the Act

The tenant testified that, although she did not dispute the Two Month Notice to End Tenancy for Landlord's Use, she filed to dispute the 10-Day Notice to End

Tenancy for Unpaid Rent issued on June 6, 2013. The tenant testified that the reason for filing to dispute the 10-Day Notice was because the landlord is claiming payment of rent for the month of June 2013, despite the fact that no rent was owed for June 2013, being that June was the final month of the tenancy according to the landlord's Two Month Notice to End Tenancy. The tenant's position is that the tenant was validly entitled to be credited with the equivalent of one month rent under the Act, so no rental arrears existed to justify the 10-Day Notice to End Tenancy for Unpaid Rent.

Given that the tenant has vacated the unit, I find that the tenant's requests to cancel the 10-Day Notice to End Tenancy for Unpaid Rent and the One Month Notice to End Tenancy for Cause, dated June 6, 2012, are moot and need not be determined. I also find that the landlord's request for an Order of Possession based on either of the above two Notices need not be determined as the tenancy has ended.

However, the landlord is still pursuing the monetary claims for June 2013 rent, as well as rent for additional occupants and loss of revenue for the month of July 2013. These monetary claims will be heard and determined.

#### Landlord's Amended Application to Include Cost of Repairs

During the hearing the landlord requested an amendment to the landlord's application to add a monetary claim against the tenant for damage to the suite left by the tenant after they had vacated.

I find that, on June 17, 2013 when the landlord made this cross application, the tenant was still residing in the rental unit and had not yet vacated. I find that the additional monetary claims for repairs to the suite came up *after* the tenancy had ended, and this occurred between the time the parties filed and the time that the joint hearing for the other issues was scheduled. I find that no amended application and no evidentiary material relating to the damage had ever been served on the tenant nor submitted to the Residential Tenancy Branch by the landlord, to explain the need for the amended claim.

Given the above, I deny the landlord's request to include a claim for compensation for the cleaning and damages on the basis that the landlord failed to follow the Rules of Procedure. I also find that allowing an amended amount to the claim would unfairly prejudice the respondent who did not receive advance notice to prepare to defend against the added monetary claim.

However, I find the landlord is still at liberty to pursue an application for dispute resolution under section 67 of the Act, to seek monetary compensation for other losses or damages based on another party's failure to comply with the Act.

### **Remaining Issue to be Decided**

Is the landlord entitled to compensation under section 67 of the *Act*?

### **Background and Evidence**

The tenancy began in September 2010 and no written agreement was created, other than a brief, written note consisting of one sentence, signed by both parties. A security deposit of \$400.00 was paid.

The landlord apparently issued a Two Month Notice to End Tenancy for Landlord's Use and served it on the tenant ending the tenancy with an effective date of July 1, 2013. The tenant testified that the rental unit was vacated on July 1, 2013 and the landlord testified that the key was returned on July 2, 2013.

The landlord testified that the tenant failed to pay rent owed for the month of June 2013 and the landlord therefore issued a 10-Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the arrears and the landlord is claiming rental arrears of \$800.00.

The landlord testified that, on the same day, they also issued a One Month Notice to End Tenancy for Cause and served it on the tenant. Copies of both the 10-Day Notice and the 1-Month Notice were submitted into evidence.

The landlord testified that during the tenancy, the tenant permitted another occupant to reside in the rental unit for an extended period without the landlord's permission. The landlord is claiming compensation of \$800.00 comprised of additional rent of \$400.00 per month for two months.

The landlord testified that the tenant did not return the keys until June 2, 2013 and the landlord feels that this entitles to charge the tenant an extra month rent of \$800.00 to cover the month of July 2013.

The total claim being made by the landlord is \$2,400.00 plus the \$50.00 cost of the application.

The tenant disputed all of the above claims, taking the position that the rent for June was allocated as a credit for the tenant because of the landlord's issuing of the Two Month Notice to End Tenancy for Landlord's Use under section 49, of the Act. The tenant pointed out that she did allow another occupant to stay in the unit, but did not

agree to pay any additional rent per occupant as part of the tenancy agreement. The tenant also disagreed with the landlord's claim for an additional month of rent for July 2013 and testified that all of her possessions were completely removed from the rental unit as of the effective date documented on the Two Month Notice to End Tenancy for Landlord's Use.

**Analysis: Rental Arrears for June 2013**

The tenant admitted that no rent was paid to the landlord for the month of June 2013.

In regard to the rent being claimed by the landlord, I find that section 26 of the Act states that rent must be paid 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."*

(My emphasis)

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

However, in this case the tenant has claimed that she was entitled to withhold the rent based on the fact that the landlord issued a *Two Month Notice to End Tenancy for Landlord's Use*. I find that section 49 of the Act states that a landlord may end a tenancy for landlord's use by giving notice to end the tenancy effective on a date not earlier than 2 months after the date the tenant receives the notice. I accept the evidence acknowledged by both parties, that a 2-Month Notice was served on the tenant terminating the tenancy effective July 1, 2013.

In addition to the above, I find that section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Act also states that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent.

I find that after the landlord issued the Two Month Notice to End Tenancy for Landlord's Use, the tenant was then fully entitled under the Act to a free month rent or a refund of \$800.00 for the month of June 2013. I find that this free month rent credit would be applicable to the period from June 1, 2013 until June 30, 2013. I find that the tenant validly withheld payment of rent for this final month of the tenancy, as she was entitled to do under the Act. Therefore I find that the June 6, 2013, 10-Day Notice to End

Tenancy for Unpaid Rent issued by the landlord was not justified and must be cancelled. I find that the landlord's claim for rental arrears of \$800.00 for the month of June must be dismissed.

**Analysis: Additional Rent For Extra Occupants**

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established either under the Act or the tenancy agreement. Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with:

(a) rights, obligations and prohibitions under the Act; OR

(b) rights and obligations under the terms of a tenancy agreement.

(My emphasis)

With respect to the landlord's monetary claim seeking extra rent based on the presence of an additional occupant for two months, I find that the justification to impose extra rent charges by number of occupants must be found in the tenancy agreement, because there is no requirement under the *Residential Tenancy Act* that a tenant pay rent based on the number of occupants.

In fact, section 30 (1) of the Act, prohibits a landlord from unreasonably restricting access to residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by that tenant.

In considering the tenancy agreement signed between these two parties, I find that the written document establishing this tenancy does not contain any tenancy term which requires the tenant to get approval from the landlord or to pay a higher amount of rent for each additional occupant.

It appears that the landlord has based the claim for \$400.00 extra rent per month on an understanding or presumption made unilaterally by the landlord, rather than a genuine tenancy term understood and mutually agreed-upon by both parties at the start of the tenancy.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if:

- a) the term is not consistent with the Act or Regulations,
- b) the term is unconscionable, or
- c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that a disputed verbal term is not sufficiently clear to support enforcement under section 6(3)(c) above.

I find that section 14(1) of the Act states that a tenancy agreement may not be amended to change or remove a standard term and may only be amended to add, remove or change any other term unless both parties agree.

Accordingly, the landlord's claim for \$800.00 additional rent owed for the extra occupant must be dismissed.

**Analysis: Loss of Revenue for July 2013**

With respect to the landlord's claim for a loss of \$800.00 revenue for the month of July 2013, I find that the landlord terminated the tenancy for landlord's use effective July 1, 2013. I accept the tenant's testimony that the tenant had vacated as of July 1, 2013 and surrendered the key on July 2, 2013.

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

**Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the landlord's claim for monetary compensation failed to satisfy element 2 of the test for damages because the tenant was not in possession of the rental unit and did not reside in the unit past July 1, 2013.

In any case, even if I found a violation of the Act, the landlord's claim would not satisfy element 3 of the test for damages because, according to the Two Month Notice to End Tenancy for Landlord's Use, the landlord did not intend to re-rent the unit and therefore would not be able to establish a tangible loss of income.

Accordingly, I find that the portion of the landlord's monetary claim relating to loss of revenue for the month of July 2013, must be dismissed.

Based on the testimony and evidence presented during these proceedings I find that the landlord is not entitled to the claimed monetary compensation for rent or loss of revenue and the landlord's application must therefore be dismissed in its entirety without leave.

I find that the tenant's application did not need to be determined as the tenancy has already ended. I find that the tenant's \$400.00 security deposit still held in trust by the landlord on behalf of the tenant must be refunded to the tenant in accordance with section 38 of the Act.

### **Conclusion**

The landlord is not successful in the application and the claim for monetary compensation for rent owed and loss of rent is dismissed. The remainder of the issues in the tenant's and the landlord's applications are found to be moot as the tenancy has ended.

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 11, 2013

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Residential Tenancy Branch