



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant to cancel a notice to end tenancy for unpaid rent or utilities and for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the *Act*).

The tenant and landlord appeared for the hearing and no issues in relation to the serving of hearing documents under the *Act* were raised by any of the parties.

At the start of the hearing, the tenant explained that she had left the tenancy and as a result withdrew the portion of her application relating to cancelling the notice to end tenancy.

The tenant claimed that she had provided documentary evidence prior to this hearing taking place; however, no such evidence or record of evidence being received by the Residential Tenancy Branch was before me at the time of the hearing. The landlord provided an evidence package which the tenant did not receive prior to this hearing taking place. As a result, I did not take the documentary evidence submitted by the landlord into consideration when making a decision in this case. The landlord and tenant provided affirmed testimony which has been carefully considered in this decision.

The tenant also claimed that the landlord had failed to return the pet damage deposit and wanted to include this in her application. However, as the tenant had not claimed for the return of the pet damage or security deposit on the application, I did not deal with this portion of the claim.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for overpayment of utilities and for the landlord ending the tenancy for landlord's use of the property?

### Background and Evidence

The landlord testified that the month to month tenancy started on October 1, 2012 and ended with the tenant leaving on October 7, 2013. Rent in the amount of \$1,350.00 was payable on the first day of every month. The tenant paid a security deposit of \$675.00 before the tenancy started which was returned by the landlord on October 7, 2013.

The tenant testified that the tenancy began on October 11, 2012 and that the monthly rent amount was paid to the landlord in two parts; \$950.00 was paid by the disability department and \$400.00 was paid to the landlord directly by the tenant. The tenant testified that she gave the landlord a forwarding address on September 25, 2013 by registered mail after leaving the tenancy. The tenant disagreed about the date she vacated the rental suite and testified that she moved out at the end of September, 2013.

The tenant testified that on July 29, 2013 she received from the landlord a typed notice which was posted to her door explaining that the landlord needed vacant possession of the property for her son's use for October 31, 2013. As a result, the tenant accepted the notice as one for landlord's use of property and gave written notice to the landlord on September 18, 2013 to move out earlier by the end of September 31, 2013. The tenant claims that as a result, she was entitled to the compensation that a landlord is required to give when ending a tenancy for landlord's use of property in the amount of \$950.00.

The tenant testified that the landlord also owes her \$600.00 in overpayment of utilities which she had paid to the landlord and claims that the tenancy agreement clearly indicated that the tenant was not responsible for utilities. However, when the tenant was questioned about the dates that the overpayment of utilities claimed related to, the tenant was unable to provide them testifying that she made various payments of utilities throughout the tenancy and realised towards the end of the tenancy that she was not responsible for paying them. The tenancy agreement the tenant alluded to was not provided as evidence but the tenant confirmed that it was a tenancy application which was used for the purposes of submitting to the disability department. The tenant testified that this document was signed by the landlord and showed that the utilities were included in the rent but that the rent amount was only \$950.00 on this document.

The landlord confirmed that she had given the tenant a typed notice asking her to leave by October 31, 2013 as she needed the property for her own use. However, the landlord acknowledged that she was not aware that she had to end the tenancy for this purpose using an approved form and that there was a requirement for her to compensate the tenant as a result of issuing such a notice. The landlord testified that the tenant had given written notice to leave earlier for the end of September, 2013, but did not leave

until October 7, 2013. The landlord testified that she did not receive any rent for the period of October, 2013 from the disability department because this was given to the tenant directly from the disability department and that this was her compensation.

In relation to the tenant's claim for utilities, the landlord stated that no written tenancy agreement was completed and that the intention at the start of the tenancy was that the tenant would pay half of the utilities and testified to an advertisement that she had placed which clearly stated that the tenant for the rental suite was responsible for half the utilities. The landlord testified that each month she would ask the tenant for payment of the utilities but on occasions she would forgo the utility payments. When the landlord was questioned about the document she had signed stating that the rent included the utilities, which the tenant claimed was a written tenancy agreement, the landlord stated that the tenant asked her to put this on the rental application form for the disability department which is the reason why the rent amount on the document was \$950.00

The tenant testified that the landlord's payment for October, 2013 from the disability department was stopped after she showed them the notice that had been given to her by the landlord, and as a result, payment was stopped because the landlord was required to give her one month's compensation.

### Analysis

In relation to the tenant's monetary claim for the one month's compensation for rent as a result of being issued with a notice to end tenancy, I make the following findings. The landlord confirmed that the tenant had been given a notice at the end of July, 2013 asking for the tenancy to end on October 31, 2013 for landlord's use of the property.

The *Act* states that if a landlord wants to end a tenancy for landlord's use of the property, they must issue the tenant with a notice in the approved form. However, whilst the landlord did not use the approved form as required by the *Act*, the landlord confirmed the intention of the notice to end the tenancy and for this reason the tenant accepted the notice in good faith and acted in reliance on the notice by giving the landlord a written 10 day notice to leave the tenancy earlier which the tenant is able to do under the *Act* after such a notice is issued.

Whilst the landlord did not use the approved form this does not allow the landlord and tenant to contract outside of the notice or the landlord to benefit by not following the *Act* and neglecting to provide the notice in the approved form. As a result, I find that the tenant was served a notice to end tenancy for landlord's use of property and the landlord was required to provide one month's rent as compensation under the notice.

Section 51 of the *Act* states that a tenant may receive this compensation either by withholding the last month's rent if they decide to stay until the effective day of the notice or if the tenant gives written notice to leave earlier **before withholding the last month's rent**, the landlord must refund that amount. The landlord and tenant both confirmed that they had not received any monies from the disability department for the last month's rent and I accept the evidence of the tenant that the tenancy was ended earlier as per the written notice given to the landlord even though there was dispute about the exact date the tenant actually vacated the rental suite. As a result, I find that the landlord must refund the equivalent of one month's rent in the amount of \$1,350.00 to the tenant as per the requirements of the *Act*.

However, the tenant has only made a claim for \$950.00 in her application and therefore this is the only amount I am able to award. Nevertheless, I find that the resulting amount the landlord would have had to pay had the tenant claimed the full month's rent as compensation, will more than compensate the landlord for the time the landlord claims the tenant remained in the tenancy as an over holding tenant until October 7, 2013.

In relation to the overpayment of utilities claimed by the tenant, the landlord disputes these overpayments. As a result, I find the tenant failed to provide sufficient evidence to determine who was responsible for the utilities and more importantly, failed to provide details of when the overpayments were made and proof of them. Therefore, I find that there is insufficient evidence to support this portion of the claim which I hereby dismiss.

### Conclusion

For the reasons set out above, I grant the tenant monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$950.00**. This order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: November 01, 2013

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Residential Tenancy Branch

