



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MND, MNSD, FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary orders for unpaid rent, for damages and cleaning at the rental unit, for monetary compensation under the Act or tenancy agreement, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issues

The Landlord had submitted his documentary evidence to the Branch late for the hearing and I found it was inadmissible. The Tenant had submitted her documentary evidence on time. After discussing the options with both parties, the Landlord determined they would withdraw all claims regarding damages and cleaning or other monetary compensation, and the parties agreed we simply proceed with the hearing on the sole issue of rent money and the security deposit.

As the Landlord has withdrawn their claims for all other remedies, with the exception of the issue of rent and the security deposit, I dismiss those claims with leave to reapply.

During the hearing, the Tenant had to be cautioned not to interrupt the person speaking. It was explained that if they did not agree to something that was said, they could write a note to themselves and their point would be discussed when it was their turn.

Issue(s) to be Decided

Is the Landlord entitled to rent?

Is the Landlord entitled to keep the security deposit in partial satisfaction of the claims?

Background and Evidence

This tenancy began on June 1, 2013, with the parties entering into a written tenancy agreement. The tenancy agreement was not in the admissible evidence before me therefore, the oral evidence of the parties as to the written agreement was accepted.

The parties agreed that they signed the tenancy agreement on May 18, 2013, that the tenancy started on June 1, 2013, that it was a month to month tenancy, that the monthly rent was \$900.00, and that a pet deposit of \$450.00 was paid to the Landlord on May 15, 2013.

The parties also agreed that they had an arrangement where the Tenant could pay the Landlord half of the rent on the 15<sup>th</sup> day of the month and the other half on the 30<sup>th</sup>, in order to accommodate the Tenant.

The parties agreed a condition inspection report was performed at the outset of the tenancy.

The Tenant testified that on July 3<sup>rd</sup> or 4<sup>th</sup>, 2013, she gave the Landlord a notice she was leaving the rental unit at the end of July 2013. The Tenant testified she either gave the notice to end tenancy to the Landlord in a text message or posted it on the page of a popular social media website, she was unsure of which she used.

On July 4, 2013, the Landlord served the Tenant with a one month Notice to End Tenancy alleging repeated late payment of rent and that the Tenant had caused extraordinary damage to the rental unit property. The effective date of this notice was listed as August 4, 2013. It was explained to the parties during the hearing that this was an incorrect effective date and that the effective date of the notice would have corrected automatically under section 53 of the Act to August 31, 2013.

The Landlord testified that toward the end of the tenancy he proposed three different times to the Tenant to conduct the outgoing condition inspection report. The Tenant would not agree to these times and wanted to perform the condition inspection report the next day, July 17, 2013. The Landlord testified he was not available on that day and wanted to have a witness attend with him at the outgoing report, as he did not trust the Tenant due to a number of stories he had heard her tell. The Tenant vacated the rental unit on July 17, leaving the keys in the mailbox.

The Landlord testified he performed the outgoing condition inspection report on July 18, 2013, and then sent the Tenant a copy of the report.

The Landlord testified that the Tenant did not pay him rent for July and did not give him the required notice to end tenancy, and therefore, he lost a month of rent for August as well. The Landlord claims for \$1,800.00 in unpaid rent.

The Tenant claims she paid the Landlord the rent for half of the month of July and told him he could keep the security deposit for the rest of the rent in July. The Tenant testified that the Landlord issued her a receipt for payment of the July rent, but that the dates were confusing on the receipt. The Tenant testified she saw the Landlord with a can of beer in his hand when he was filling out the receipt and she alleged he was likely impaired and made a mistake on the dates.

In evidence the Tenant provided the written receipt. The receipt is typed out and entitled "April Rent Receipt". Below the title, the receipt reads,

"June 1, 2013 2<sup>nd</sup> part Rent for June due June 30<sup>th</sup>,  
Received ---- Four Hundred and Fifty dollars ---- xx cents  
Signed [Landlord's signature]"

[Reproduced as written.]

Hand written below the Landlord's signature are the numbers, "7/4/13".

Below the numbers there is handwriting stating,

"[The Landlord] wrote this receipt for payment for July 1-15/2013."

[Reproduced as written.]

The Landlord testified that he signed this receipt on July 4, 2013, and it was for the balance of June rent and was being paid late. The Landlord said that he used a computer at his office to print out all the rent receipts, as he had no computer at home.

He testified he forgot to delete the "April" title on the receipt, but that the Tenant was not in the rental unit until June in any event.

When I asked the Tenant who wrote the statement that the "Landlord wrote the receipt for July 1-15..." , at the bottom of the receipt the Tenant testified that since she was not there when the Landlord wrote the receipt, her friend that made the payment to the Landlord wrote it in.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Tenant has breached section 45 of the Act by failing to give the Landlord the required notice to end tenancy, and the Tenant has breached section 26 of the Act by failing to pay rent when due.

Under section 45 of the Act the Tenant was required to give the Landlord one month of notice that she was ending the tenancy. Pursuant to section 52 of the Act, this notice was required to be in writing, had to provide the address of the rental unit, had to state the effective date of the notice and must have been signed by the Tenant. I find the Tenant failed to provide any evidence her notice complied with these provisions.

I do not accept the Tenant paid the Landlord any rent for July 2013. The receipt references June several times, and I find the receipt is typewritten for the balance of June 2013 rent. Although the page has a mistake in the title, the Tenant was not in the rental unit in April. Therefore, I find there was a typographical error only in the title of the receipt.

I also find the Tenant lacked consistency in her testimony regarding the receipt. The Tenant initially testified she saw the Landlord complete the receipt with a can of beer in his hand, and this allowed her to allege the Landlord was impaired and made a mistake writing the dates. It is clear the dates of the important part of the receipt, those which the payment of rent is being accepted for, are typewritten. The Landlord could not have handwritten the dates in by mistake, when the dates were typewritten. Furthermore, later in the hearing, the Tenant testified she was not present when the Landlord signed the receipt, and this is why the person paying the rent wrote the statement on the bottom of the receipt. This was inconsistent with her testimony earlier in the hearing and I found this brought into question her credibility.

For the above reasons, I find the Landlord is entitled to rent for July and August of 2013, in the amount of \$1,800.00, and I allow the Landlord his filing fee for the Application. I

will allow the Landlord to set off the security deposit against this, although I must make a finding regarding the return of the security deposit.

After the Tenant informed the Landlord she could not attend at his proposed times for conducting the move out condition inspection report, the Landlord failed to issue the Tenant a written notice of her second (and final) opportunity to attend the outgoing report, as required by section 17 of the regulation to the Act.

Therefore, under section 38 of the Act and under the policy guidelines, I must order the Landlord to pay the Tenant double the security deposit in the amount of \$900.00.

Pursuant to section 72 of the Act, I order a set off of the security deposit against the rent owed, and issue the Landlord a monetary order payable by the Tenant in the amount of **\$950.00**, which includes \$50.00 toward the filing fee for the Application. This order may be enforced in the Provincial Court.

### Conclusion

The Tenant breached the Act by failing to give the required notice to end tenancy and by failing to pay rent for July and August.

The Landlord breached section 17 of the regulation to the Act, and therefore, I must offset double the security deposit against the two months of rent owed by the Tenant. I order the Tenant to pay the Landlord the sum of **\$950.00**. This order is enforceable in the Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 01, 2013

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Residential Tenancy Branch

