



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MND, MNDC, MNR, MNSD, OPB, FF  
Tenant: MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and a monetary order and the tenant seeking a monetary order.

The hearings were conducted via teleconference and were attended by both the landlord and the tenant. The landlord's agent and the tenant's witness only attended the reconvened hearing.

At the original hearing the tenant submitted that the landlord had not served her with a copy of his Application for Dispute Resolution. I adjourned the hearing and ordered the landlord to serve the tenant with a copy of his Application. I also ordered that neither party could amend their Application or provide additional evidence.

At the outset of the original hearing the parties confirmed the tenant was no longer living in the rental unit. As such, there was no need for the landlord to obtain an order of possession and I amended his Application to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement for an 11 month and 17 day fixed term tenancy beginning on July 13, 2013 for a monthly rent of \$1,550.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid on July 8, 2013.

The parties agree the tenant provided the landlord with rent in the amount of \$900.00 for the period of July 13, 2013 to July 31, 2013 on July 13, 2013.

The landlord submits that the tenant then abandoned the rental unit on July 26, 2013 without any notice provided to the landlord. The landlord seeks compensation in the amount of \$1550.00 for rent for the month of August 2013.

The tenant submits that when she had agreed to the tenancy she had advised the landlord and his agent that she could not afford to rent the rental unit on her own and that she would require a roommate. The parties agree the tenant was informed that any roommates would need to be assessed and accepted by the landlord.

The tenant submits that she provided the landlord with her roommates name on July 5, 2013 and that the landlord did not tell her until July 11, 2013 (the day the tenant moved into the rental unit) and after she had provided the landlord with a cheque for the prorated July 2013 rent that he would not accept the roommate as a tenant. The landlord testified he rejected the roommate because she had a dog and he has a strict no pet policy.

The tenant submits that despite agreeing to rent the unit and to the amount of rent she did not sign the tenancy agreement because the landlord was suppose to write an addendum that would include reference to the roommate. The landlord did submit a copy of an unsigned addendum to the tenancy agreement that states, in reference to occupants:

“No more than two people living in rental suite. Guest may stay for no more than fourteen calendars per month. Each person that resides in rental suite must have personal reference checks including credit checks prior to moving in.”

The tenants submits that after she advertised the rental unit; a lead for a roommate provided by the landlord fell through; and many attempts to have the landlord compromise she felt she had no choice but to vacate the rental unit.

She submits she removed her belongings on July 26, 2013 and informed the landlord that she would be back to clean carpets and floors but when she tried to return the locks had been changed. The landlord submitted into evidence a handwritten note from the tenant dated July 30, 2013 providing the landlord with her forwarding address.

Despite the provision into evidence of copies several text messages between the tenant and the landlord's agent the tenant has provided no copies of text messages to either the landlord or his agent indicating her intent to vacate the rental unit. The text messages submitted are dated July 23, 25, 27, 30, and 31.

The landlord submits that the tenant never told him she was moving out but he found out on July 27, 2013 when he was attending the residential property and thought the unit looked abandoned. He also submits that the downstairs tenant is the one who informed him on July 27, 2013 that the tenant had moved out the day before. The landlord testified as a result of the abandonment he changed the locks.

The tenant submitted into evidence copies of online advertisements for the rental unit starting on August 8, 2013 for rent of \$1,500.00 later reducing the rent to \$1,350.00 on August 27, 2013.

In his original Application the landlord sought rent in the amount of \$1,550.00 for the month of August 2013. In his documentary evidence he states that he was unable to rent the unit until October 1, 2013 and he was now seeking rent for the months of August and September 2013.

The landlord submits that he is also seeking compensation in the amount of 650.00 for replacing carpet in the office area of the rental unit despite the total cost to him of \$1,012.31.

The landlord submitted a copy of a move in Condition Inspection Report signed by the tenant recording the flooring all in good shape. He also has submitted photographic evidence of a stain in the carpet in one room and several other photographs showing some wear and tear in the carpet. The landlord submits the carpets were installed 9 or 10 years ago.

### Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

From the testimony of both parties I am satisfied that the parties came to an agreement that the tenant would rent the rental unit for a period of 11 months and 17 days and that the rent would be \$1,550.00 due to the landlord on the 1<sup>st</sup> of each month. I am also satisfied that the tenant provided the landlord with a security deposit and with rent for the portion of the first month of the tenancy.

I also am satisfied that the parties agreed that the tenant could have one roommate and that roommate would have to be approved by the landlord after reference and credit checks before the roommate could move in.

As such, I find that the both parties had entered into a binding tenancy agreement. As a result, I find that the tenant remains responsible for the full amount of rent whether or not she had a roommate at any time during the tenancy. I find the finding and approval of a roommate was not a pre-condition of the agreement nor was it a material term of the tenancy.

A material term is a term in a tenancy agreement that both parties agree prior to the start of the tenancy that a single breach of the term is sufficient to end the tenancy. While the tenant submits that the landlord's agent had agreed that she could not afford to live in the rental unit if she didn't have a roommate I find that this does not constitute any term related to having a roommate was material.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the tenant had informed the landlord of a breach of a material term or provide him with a reasonable time to correct the breach I find the earliest the tenant could end this tenancy in accordance with Section 45 is the date that is identified in the tenancy agreement as the end of the fixed term (June 30, 2014).

I therefore find the tenant is responsible for the payment of rent to the end of the fixed term subject only to the landlord's obligation to mitigate his losses. Based on the evidence submitted by the tenant I find the landlord took reasonable steps to re-rent the unit by advertising the unit online and reducing rent when he could not obtain a tenant initially.

In his Application for Dispute Resolution the landlord sought only rent for the month of August 2013. In his evidence he submits that he was seeking compensation for the months of August and September 2013.

However, as the landlord did not amend his Application but re-submitting and serving the tenant or the Residential Tenancy Branch with an amended Application I find I can only consider the original claim of lost rent for the month of August 2013.

Based on the above, I am satisfied the landlord is entitled to compensation for the loss of rent for the month of August 2013 in the amount of \$1,550.00.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

From the testimony and evidence of both parties I find the tenant has failed to provide sufficient evidence that she informed the landlord that she intended to move out of the rental unit and return to clean the carpets before July 31, 2013. As such, I find the landlord has established the tenant abandoned the property and he had the right then to change the locks to the rental unit.

As a result, I find the tenant is responsible for compensating the landlord for damage to the carpet as shown in the landlord's Condition Inspection Report and photographs, subject to the useful life of carpets as outlined in Residential Tenancy Policy Guideline #40. The Guideline states the useful life of carpets is 10 years.

As the landlord was uncertain as to the age of the carpet but testified that it was installed either in 2003 or 2004, I find the carpeting is at least 9 years and possibly 10 years old. I therefore discount the landlord's claim in its entirety as the carpets had been used for their complete useful life.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

From the evidence before me I find the tenant provided the landlord with her forwarding address on July 30, 2013 and that the landlord submitted his Application for Dispute Resolution on August 6, 2013. I therefore find the landlord has fulfilled his obligations under Section 38(1).

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,600.00** comprised of \$1,550.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$750.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$850.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As I have applied the security deposit to the debt owed to the landlord by the tenant I dismiss the tenant's Application for Dispute Resolution seeking return of her deposit.

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: January 17, 2014

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Residential Tenancy Branch

