



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent by the tenant still owed at the end of the tenancy. The landlord was also claiming the cost of repairs and garbage removal.

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 affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation for rental arrears owed and cleaning?

### **Background and Evidence**

The tenancy began in April 2010 and the current rent was \$3,150.00. No security deposit was ever collected by the landlord as the tenant's cheque had been returned NSF.

The landlord did not submit any evidence to support the monetary claim. However, the tenant submitted evidence including a copy of the tenancy agreement.

The landlord testified that in March 2013, upon learning that the owners wanted to list the home, he verbally advised the tenant that the owners had let him know that the home was going to be put up for sale because he wanted to give them a "heads up". The landlord stated that this was done as a courtesy, knowing that the family had school-age children. The landlord also asked the tenant when would be the best time for them to vacate.

The tenant acknowledged that the landlord called on Easter Sunday in March 2013 to let them know that the home would be placed up for sale. According to the tenant, the landlord implied that the family needed to be out in 2 months. The tenant stated that she took this as a valid and enforceable verbal eviction. The tenant testified that this was devastating news and threw them into a panic.

The landlord testified that the second Friday in April 2013 the tenant called to inform the landlord that they had managed to find a place and asked the landlord to permit them to give short notice to move. The landlord testified that the tenant was given permission to move on short Notice effective the end of April.

The landlord testified that, at the time he spoke to the tenant, he was not aware that the tenant's rent cheque for April 2013 had a stop-payment placed on it. The landlord testified that he was shocked that, after his efforts to accommodate the tenant by letting them know in advance about the listing of the house and by allowing them to give short Notice to move, that the tenant would then refuse to pay the rent for April 2013.

The tenant stated that they felt entitled to withhold the final month rent. The tenant pointed out that, based on information they received from more than one source, a tenant has the right not to pay rent for the final month of occupancy when a rental unit is being sold. The tenant stated that, this is the reason that they did not pay the rent for April 2013.

The landlord testified that the tenant left damage to the rental and garbage to be removed and the landlord is claiming compensation.

### **Analysis**

With respect to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due. I find that the tenant did not pay in accordance with the Act and must now compensate the landlord for rental arrears in the amount of \$3,150.00.

In regard to the tenant's argument that they are entitled to not pay rent for the final month, because the landlord intends to list the home for sale, I find that the tenant's position in this matter has no valid basis under the Act.

Although 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 an amount that is the equivalent of one month's rent payable under the tenancy agreement, this only occurs after an official Two Month Notice to End Tenancy for Landlord's Use has been served to the tenant on the approved form.

Section 49(5) states that the 2-Month Notice can't even be served on a tenant until the home is already sold to the new owner and the new owner requests that the tenancy be ended by the current owner in writing.

In the case before me, I find that no Two Month Notice to End Tenancy for Landlord's Use was ever served on these tenants. I find that the tenant's gave Notice to end the tenancy and vacated at the end of April 2013, without paying the rent for April.

Given the above, I find that the landlord is entitled to the rentals arrears owed in the amount of \$3105.00.

In regard to the landlord's claim for damages, I find that 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 is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the landlord has not met the burden of proof by satisfying each element of the test for damages above. Accordingly, I find that the portion of the landlord's application dealing with damages must be dismissed.

Based on the evidence, I grant the landlord a monetary order in the amount of \$3,155.00, comprised of \$3,105.00 rent and the \$50.00 cost of the application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

**Conclusion**

The landlord is partly successful in the application and is granted a monetary order in compensation for the rental arrears. The landlord's claim for damages is dismissed. and cleaning.

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: February 20, 2014

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Residential Tenancy Branch

