



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, FF.*

### **Introduction,**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of cable, cleaning, garbage removal and for the filing fee. The tenant applied for the return of rent and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to a monetary order for the cost of cable and cleaning and for the filing fee? Is the tenant entitled to the return of rent and the filing fee?

### **Background and Evidence**

The tenancy started on May 01, 2011 and ended on October 31, 2013. The monthly rent was \$975.00 payable on the first of each month. On or about October 23, 2013, the tenant gave the landlord notice to end the tenancy effective October 31, 2013. At this point the testimony of both parties was different and contradictory. The landlord stated that the tenant agreed to pay \$975.00 as compensation for breaching the contract by providing inadequate notice to end the tenancy. The tenant testified that he agreed to pay for any loss of income that the landlord would suffer for November 2013.

The landlord acted responsibly and mitigated her losses by looking for a tenant for November. A new tenant moved in on November 01, 2013. The tenant had moved out on or about October 27, 2013 and was not aware that the landlord had found a new tenancy for November 01, 2013.

The tenant stated that on October 31, 2013, the landlord requested him to return the keys immediately. The tenant stated that since he had paid rent for November, he intended to return to finish cleaning and remove cardboard boxes that were left behind.

The tenant testified that when he got to the rental unit on October 31, it was already cleaned. The landlord accepted the keys, returned his security deposit and made no mention of any monies owed to the landlord.

The tenant stated that on November 04, 2013, he visited the rental unit and found that it was occupied. The landlord had already cashed his rent cheque for November and therefore the tenant decided to apply for dispute resolution for the recovery of rent.

Both parties filed copies of the tenancy agreement. Both copies indicated that the tenant was required to pay \$10.00 for an additional entertainment channel and that at the start of the tenancy; the tenant paid \$60.00 for this additional cable for the period of April 2012 to September 2012. After September 2012, the tenant did not pay this additional cable cost and the landlord did not request it during or at the end of tenancy...

The copy of the landlord's agreement shows a hand written entry indicating that the tenant also agreed to pay \$10.00 for a sports channel effective January 2013. This addition to the tenancy agreement was written in January 2013 but is not initialled by the tenant and does not show in the tenant's copy of the tenancy agreement. The tenant stated that he did not agree to pay any additional funds for an extra sports channel.

The landlord is claiming \$280.00 towards the cost of the extra cable channels which is for the period of October 2012 to October 2013. The landlord's claim is for 14 months of both channels but the extra sports channel started in January 2013 and the number of months during this period is 13. The landlord has provided copies of cable bills.

The landlord is also claiming the cost of cleaning, garbage removal and carpet cleaning and has filed copies of receipts that show that the cleaning was done on November 01, 2013, the carpet cleaner was rented at 1:22pm on October 31, 2013 and garbage was removed on November 03, 2013. The total amount for these items is \$287.85.

## **Analysis**

### **Landlord's application:**

#### **Cable - \$280.00**

Upon review of the tenancy agreements filed by both parties I find that the tenant agreed to pay \$10.00 per month for the entertainment channel. I further find that the amendment to the tenancy agreement for the additional cost of the sports channel was not initialed by the tenant and he testified that he did not agree to pay this additional charge. Therefore I find that the tenant is not liable for the cost of the sports channel.

Regarding the entertainment channel, the tenant stated that the landlord did not request payment during the tenancy and even returned the security deposit without mentioning this additional cost of the entertainment channel.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to collect the \$10.00 for the cost of the entertainment channel in a timely fashion, or shortly after each of the occasions when it became due, pursuant to the doctrine of laches, I find that this aspect of the landlord's application must hereby be dismissed.

Therefore I dismiss the landlord's application for the cost of the entertainment and sports cable channels in the amount of \$280.00.

Cleaning, garbage removal and carpet cleaning - \$287.85

Based on the testimony of both parties, I find that the tenant was given to understand that due to his inadequate notice to end the tenancy, he was required to pay rent for November 2013. I further find that the tenant moved out on October 27, 2013 and fully intended to return to finish cleaning the unit, as upon payment of rent he would have had possession of the unit for November. The landlord agreed that the tenant was requested to return the keys on October 31 which he did. The landlord made no mention of deductions for cleaning or garbage removal and returned the security deposit to the tenant, that day. The tenant stated that the unit was already cleaned when he returned to hand over the keys to the landlord.

Based on the testimony of both parties, I find that the landlord had the unit cleaned in preparation for the new tenant who moved in on November 01, 2013. Therefore the tenant was not given the opportunity to finish the cleaning. In addition, if the condition of the unit was unacceptable the landlord should have notified the tenant on October 31, 2013 and discussed retaining a portion of the security deposit. The landlord did not notify the tenant of any discrepancies and chose to return the security deposit in full. Finally, I find on a balance of probabilities that it is more likely than not that the landlord made this application on February 27, 2014, in response to the tenant's application for the return of rent.

For all the above reasons, I find that the landlord is not entitled to the cost of cleaning and garbage removal. Since the landlord has not proven her case she must bear the cost of filing her application.

Tenant's application:

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant breached the contract by not giving the landlord adequate notice to end the tenancy and is therefore responsible for any loss of income that the landlord may have suffered as a result of this breach.

Section 7 of the Act provides:

***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In this case, the landlord took steps to mitigate her losses and as a result found a new tenant and thereby did not suffer a loss of income. Therefore the landlord is not entitled to rent from the tenant for the month of November. The landlord argued that the tenant had agreed to pay \$975.00 as compensation for inadequate notice and the tenant denied having done so.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the landlord did not have any evidence to support her claim that the tenant had agreed to pay \$975.00 as compensation for not providing adequate notice. Since the landlord did not suffer a loss of income for the month of November 2013, she must return the rent paid by the tenant for this month.

Since the tenant has proven his case, he is entitled to the recovery of the filing fee of \$50.00.

The tenant has established a total claim of \$1,025.00 and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$1,025.00.**

The landlord's application is dismissed.

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: March 12, 2014

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Residential Tenancy Branch

