



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP, MNDC, MND, MNR, MNSD, FF, O

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were scheduled to be heard together; however the tenant was unable to provide any evidence as to when and how she served the landlord with a copy of the notice of hearing and hearing package.

The tenant's application was filed on February 5, 2014; however the landlords testified that they did not receive the tenants hearing package and notice of hearing until March 2014. The tenant initially stated that she serve the hearing package and notice of hearing in March, however she later changed her testimony, claiming that it was served within three days of the February 5, 2014 application, however even that testimony was vague.

Section 59(3) of the Residential Tenancy Act states:

**59(3)** Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

It's my finding "on the balance of probabilities" that the tenant did not serve her hearing package within the required timeframe, and therefore I'm not willing to proceed with her application for dispute resolution. The tenant's application will therefore be dismissed with leave to reapply.

This hearing therefore only dealt with the landlord's application for dispute resolution.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

#### Issue(s) to be Decided

Has the landlord established a monetary claim against the tenant in the amount of \$18,722.52?

#### Background and Evidence

The landlord's agent testified that:

- This tenancy began on September 1, 2013 with the monthly rent of \$1750.00, and at that time security deposit of \$650.00 was transferred to this unit.
- The parties agreed to a fixed term tenancy with an end of tenancy date of April 1, 2014.

- The tenants failed to pay any rent for the month of September and therefore on September 18, 2013 a 10 day Notice to End Tenancy was posted on the tenant's door.
- For the remainder of September 2013 and into October 2013 they were unable to get a hold of the tenant however on October 6, 2013 the neighbor advised them that there were lights on in the rental unit and therefore they attended the rental unit and found the tenant there.
- At that time the tenant admitted that she had received the Notice to End Tenancy.
- They had not entered the rental unit at any time prior to meeting the tenant there on October 6, 2013.
- The first time that they entered the rental unit, without the tenant present, was on November 1, 2013 at which time it appeared that the tenant had removed all her belongings as all that was left were some pizza boxes and bottles. They therefore change the locks on that date.
- They were able to re-rent the unit for the month of November 2013 at a reduced rent of \$1700.00 per month.
- When they regain possession of the rental unit they found the unit had extensive damage and as a result they will have to pay for extensive repairs to the rental unit. They have provided a copy of an estimate for those repairs
- The rental unit was also left extremely dirty and as a result they also had to pay to have the unit cleaned.
- There had been a lawnmower and a saw left at the rental property for the tenant and both those items are also missing at the end of the tenancy.
- No further rent was ever paid, and the tenant also failed to pay her outstanding Fortis utility bills.

They are therefore requesting a Monetary Order as follows:

September 2013 rent outstanding	\$1750.00
October 2013 rent outstanding	\$1750.00
Lost rental revenue for the months of	\$8750.00

November 2013 through March 2014	
Outstanding Fortis bills \$31.65 & \$98.37	\$130.02
Repair damages to rental unit (estimate)	\$5500.00
Cleaning costs	\$472.50
Missing lawnmower (estimate)	\$250.00
Missing saw (estimate)	\$50.00
Filing fee	\$100.00
Total	\$18752.52

The tenant testified that:

- She did agree to move into the rental unit as of September 1, 2013 at a monthly rent of \$1750.00.
- She also agreed to a fixed term the April 1, 2014.
- She does not believe she should have to pay September 2013 rent, because her boyfriend at the time made an agreement with the landlord to do work in exchange for the rent and security deposit.
- She also does not believe she should have to pay for October 2013 rent or any rent thereafter, because the landlords change the locks on October 6, 2013 and denied her access.
- Utilities were her responsibility, however she thought that her boyfriend had put them in his name, however she is not sure about that.
- She should not have to pay for cleaning because the landlord locked her out of the rental unit.
- She did not cause any damages to the rental unit and has no idea how those damages occurred.
- She also did not take the lawnmower or saw from the rental unit.

In response to the tenant's testimony the landlord's testified that:

- They did not lock the tenant out of the rental unit on October 6, 2013 and did not even enter the rental unit until November 1, 2013 at which time they found the tenant had vacated. November 1, 2013 is when the locks were changed.
- The rental unit was in good condition when the tenant took possession, and when they regain possession on November 1, 2013 all the damages listed had occurred. They therefore believe that the tenant is liable for all the costs to repair those damages.
- There was a lawnmower and a saw provided at the beginning of the tenancy, and both were missing when they regained possession on November 1, 2013.
- There was never any agreement with the tenant's boyfriend to exchange rent for work. The tenant's boyfriend was fully paid for all work done.

### Analysis

Is my finding the tenant is liable for the full rent for the months of September 2013, and October 2013, as there is no evidence to show that there was any agreement that rent would be exchanged for work provided by the tenants boyfriend, and in fact the landlords have provided evidence to show that the tenants boyfriend was paid directly for work done.

Further I do not accept the tenants claim that she was locked out of the rental unit on October 6, 2013, and I therefore also allow the claim for the full outstanding rent for October 2013.

I will not allow the full outstanding rent for the months of November 2013 through March 2014 however because the landlord was able to re-rent the unit at \$1700.00 per month and therefore there was only a loss of \$50.00 per month for those five months. I will therefore allow \$250.00 of the claim for lost rental revenue for those five months.

I also allow the claim for the outstanding Fortis bills as the landlord has provided evidence that the landlord paid that outstanding amount. There is no evidence to show that the account was ever transferred into the tenant's boyfriend's name.

I will also allow a portion of the landlords claim for damages as it is my finding that the landlords have shown that this damage occurred during the tenancy or at least during the term that the tenant had control of the rental unit. I'm not willing to allow the full amount however because the landlords of only provided one estimate and it's my finding that that is not reasonable. I will therefore allow two thirds of the amount claimed for damages to the property.

I will however allow the full amount claimed for cleaning, as it's my finding that this rental unit was left in need of extensive cleaning.

It is also my finding that the landlords have shown that a lawnmower and saw were missing at the end of the tenancy, however as no estimates of been provided for replacement of those items, I will only allow a small amount. I'm willing to allow 10% of the costs claimed for the lawnmower and saw.

I will recovery of the \$100.00 filing fee.

Therefore the total amount of the claim that I have allowed is as follows:

September 2013 rent outstanding	\$1750.00
October 2013 rent outstanding	\$1750.00
Lost rental revenue for November 2013 through March 2014	\$250.00
Fortis bills outstanding	\$130.02
Two thirds of damage claim	\$3666.67
Cleaning	\$472.50
Lawnmower	\$25.00

Saw	\$5.00
Filing fee	\$100.00
Total	\$8149.19

Conclusion

I have allowed \$8149.19 of the landlords claim, and I therefore order that the landlord may retain the full security deposit of \$650.00, and I've issued a Monetary Order in the amount of \$7499.19.

The tenant's application is dismissed with leave to reapply.

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 31, 2014

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Residential Tenancy Branch

