



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OLC, MNSD, O, MNDC FF

### **Introduction**

The hearing was convened to deal with the tenant's application to set aside a Mutual Agreement to End Tenancy, for a monetary order from the landlord to compensate the tenant for ending the tenancy for landlord use and monetary compensation for a share of the cost of the tenant's internet service during the tenancy.

The application was also convened to hear with a cross application by the landlord seeking a monetary order for unpaid utilities, cleaning and damages and to retain the security deposit in partial satisfaction of the claim.

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. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

### **Issues to be Decided for the Tenant's Application**

- Should the Mutual Agreement to end Tenancy be set aside?
- Is the tenant entitled to monetary compensation for the landlord ending the tenancy for landlord use?
- Is the tenant entitled to monetary compensation for a portion of the tenant's internet service?

### **Issues to be Decided for the Landlord's Application.**

- Is the landlord entitled to compensation under section 67 of the *Act* for unpaid utilities?
- Is the landlord entitled to compensation for cleaning and damages?

### **Background and Evidence**

The tenancy began in July 2008. The tenancy ended on May 31, 2014. The monthly rent was \$1,300.00. A security deposit of \$650.00 was paid.

The tenant testified that he was forced under duress to sign a mutual agreement to end tenancy, and should have been issued a Two Month Notice to End Tenancy for Landlord's Use instead. The tenant stated that the landlord told the tenant that the landlord would be occupying his suite and pressured the tenant to agree to end the tenancy. The tenant pointed out that he only signed the agreement to avoid a public confrontation with the landlord. The tenant's position is that, because the landlord wanted the tenancy ended so the landlord could reside in the rental unit, the tenant should then receive the equivalent of one month compensation under the *Act*, in the amount of \$1,300.00.

The tenant feels that the landlord purposely manipulated the tenant to forfeit his right to the compensation by insisting that the mutual agreement be signed. The tenant is requesting that the mutual agreement be set aside and that he be granted monetary compensation that would otherwise be payable when the landlord ends a tenancy for landlord use. A copy of the mutual agreement had been submitted into evidence.

The landlord disputed the tenant's allegation that he was coerced into signing the mutual agreement and feels that it is a valid and enforceable contract.

The tenant is also seeking compensation for the landlord's use of his internet and Telus Cable services. The tenant testified that the landlord was supplied with a cable box and only paid the \$10.00 per month rental cost, but had full access to channels and the tenant's internet line. The tenant feels that the landlord should contribute 50% of the charges paid by the tenant for these services during the tenancy.

The landlord disputed the claim and pointed out that they purchased their own internet service and never agreed to share the costs with the tenant.

In regard to the landlord's claims, the landlord is seeking monetary compensation of \$1,228.61, including the following:

- \$990.00 for the tenant's portion of utilities that had been underpaid during the tenancy, pursuant to an agreed-upon term of the tenancy,

- \$105.00 for excessive wear of the flooring, based on damage allegedly documented in the move-in and move-out condition inspection reports,
- \$7.27 to replace weather stripping on the door,
- \$22.39 to repair the refrigerator, and
- \$103.95 for additional carpet cleaning beyond the tenant's efforts to clean.
- The landlord had also sought \$112.27 for the removal of a shed, but testified that the tenant had since removed it and this compensation is no longer being sought.

The landlord's evidence included copies of utility bills documenting the usage of hydro and water, along with detailed calculations of what the tenant had paid and the outstanding amounts remaining. According to the landlord, the tenant was required as a term of the tenancy agreement to contribute to the cost of the utilities. The landlord acknowledged that the parties had never signed a written tenancy agreement, but stated that the fact that the tenant had been paying for utilities is verification of the existence of the utility terms forming part of their agreement. The landlord's position is that the tenant is responsible to compensate for accrued amounts that were not paid.

In regard to the claims for repairs, in the amount of \$238.61, the landlord pointed out that these deficiencies were documented on the move-out condition inspection report and the tenant owes the landlord for the costs. No copies of the move-in and move-out condition inspection reports were submitted into evidence.

The tenant did not agree with any of the landlord's claims for outstanding utilities nor the cost of repairs.

## **Analysis**

### **Tenant's Claim for Compensation for Termination of Tenancy**

Section 44 of the Act provides how a tenancy ends:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];**
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;**
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

(My emphasis)

In this case the tenancy ended and the tenant moved out. I find as a fact that prior to this event, the parties did sign a mutual agreement to end tenancy pursuant to section 44(1)(c) of the Act because the document in evidence verifies that this occurred. I further find that the tenant even moved out of the rental unit in advance of the agreed-upon date.

In regard to the tenant's position that, because the landlord made verbal representations of their intent to move into the unit, the tenant is automatically entitled to the equivalent of one month rent as compensation under the Act, is a misunderstanding on the part of the tenant.

While it is true that 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 an amount that is the equivalent of one month's rent payable under the tenancy agreement, the fact is that no formal section 49 Notice was ever served on the tenant. I find that a verbal statement of the landlord's intent is not sufficient to trigger compensation under section 51 of the Act. A landlord cannot be forced to issue a section 49 Two Month Notice to End Tenancy for Landlord's Use. Given the above, I find that the tenant's request for an order setting aside the mutual agreement he signed and an order that he then be granted one-month compensation pursuant to section 51 of the Act, must be dismissed.

#### Tenant's Claim for Compensation for Landlord's Share of Internet and Cable

In regard to the tenant's request for compensation relating to the landlord's use of the tenant's internet and cable account, I find that this claim is not based on any provisions contained in the Act, but is ostensibly based on an alleged agreed-upon tenancy term between the parties, or a violation of a tenancy term.

Section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any disputes in relation to matters that arise both under the Act, or under a tenancy agreement.

In determining whether or not enforcement of agreed-upon terms is warranted, I find that all of the discretionary tenancy terms of this tenancy, including the alleged arrangement for internet and cable sharing, were based solely on verbal

discussions and verbal negotiations between these parties. I find that there is insufficient evidentiary support for either party's version of was or was *not* part of the tenancy arrangement or the alleged agreement in question.

For this reason, I find that the tenant has failed to meet the burden of proof to support the claim for compensation for the landlord's share of cable and internet costs. Therefore, this part of the tenant's application also must be dismissed.

#### Landlord's Claim for Utility Costs

With respect to a monetary claim for damages, it is important that the evidence furnished by each applicant/claimant 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 regard to the landlord's claim for the outstanding utility arrears, I find that section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute.

(my emphasis)

According to the landlord, the tenant owes \$990.00 in accrued utility arrears apparently based on an alleged term in the tenancy agreement that requires the tenant to pay a portion of the utilities. However, no copy of any written tenancy agreement is in evidence. I am therefore unable to examine and interpret the contract term detailing this utility arrangement.

Because the term requiring payment of utilities was pursuant to a specific provision within the tenancy agreement and no copy of the tenancy agreement is

before me, I find insufficient evidence was produced by the landlord that would justify granting this portion of the landlord's claim.

In addition to the above, section 6(3) of the Act states that a term of a tenancy agreement is **not enforceable** if: (a) the term is inconsistent with the Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (My emphasis).

I find that a disputed verbal term is unclear and therefore cannot be enforced. Accordingly, I find that the landlord's claim for utility arrears must be dismissed.

#### Landlord's Monetary Claim for Cleaning and Repairs

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this section of the Act, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Completing move-in and move out condition inspection reports is a requirement under the Act under sections 23(3) and section 35. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, I find that the landlord failed to submit any copies of the move-in or move-out condition inspection reports. I find the absence of these reports, has hindered the landlord's ability to prove that the tenant caused the damage and that the tenant should be held accountable for the costs of cleaning or repairs.

Even if I accept the landlord's testimony as fact that this damage did exist at the end of the tenancy, it is not possible to verify what condition the rental unit was in when the tenancy began due to the missing move-in condition inspection report. Therefore, I am unable to determine what damage had actually occurred during the tenancy, caused by the actions of these tenants. For this reason, I find the landlord's monetary claims fail to meet element 2 of the test for damages and must be dismissed.

In addition to the above, I find that the landlord did not furnish sufficient proof of the claimed expenditures. I therefore find that the landlord's monetary claims also failed to satisfy element 3 of the test for damages:

Accordingly, I find that the landlord's claims for cleaning and repair costs are not adequately supported by evidence and must therefore be dismissed.

Based on the evidence before me, I find that both the landlord's application and the tenant's application for compensations must be dismissed.

As I have dismissed the landlord's claims against the tenant, I find that the landlord is therefore required to refund the tenant's security deposit being held in trust on behalf of the tenant pursuant to section 38 of the Act, plus interest.

I hereby grant the tenant a Monetary Order against the landlord for a refund of the \$650.00 security deposit plus \$4.90 interest for total compensation of in the amount of \$654.90. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's and the tenant's applications are dismissed without leave. Each party is responsible to pay for their own application costs.

### **Conclusion**

The tenant is partly successful in the application and is granted a monetary order for a refund of the tenant's security deposit. The landlord is not successful in the cross application and the landlord's application is dismissed without leave.

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: June 18, 2014

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Residential Tenancy Branch

