



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

### Dispute Codes

For the landlord – MNR, MNSD, FF

For the tenant - MNSD

### Introduction

This review hearing was conducted by conference call in response to the tenant's application for a review consideration of the original Decision and Order made on July 18, 2014. The tenant's application for a review consideration was successful and this review hearing was granted to rehear part of the landlords and tenant's application concerning the landlord's claim for a loss of rent for March, 2014. This review decision must be read in conjunction with the original decision dated July 18, 2014.

The tenant served the landlord with the reconvened hearing letter and a copy of the review consideration decision by registered mail on August 27, 2014. The matter was adjourned as the Arbitrator had not received the landlord's evidence and the tenant wished to refer to this evidence. The hearing was reconvened on December 04, 2014.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for a loss of rent for March, 2014?

### Background and Evidence

At the previous hearing the landlord sought a loss of rent for March, 2014 due to late notice being given by the tenant to vacate the rental unit. Rent for this unit was \$495.00 per month. The tenant agreed that late notice had been given due to extenuating circumstances after the death of a third person residing in the shared unit.

The landlord gave sworn testimony that the tenant's room in the unit had not been re-rented for the month of March and that the person staying in the deceased tenant's room was someone the landlord knew who was going to repair that room and replace the door which was damaged after the police had to affect entry. The landlord gave testimony that this person was only there to make repairs and was not a replacement tenant for the deceased tenant's room.

At the review consideration the tenant provided emails from two former tenants living at the dispute address. In the first email a tenant (AA) has stated that he lived at the dispute address from March 05 to April 19, 2014. In the second email another tenant living at the dispute address in a different room stated that he had resided at the dispute address from February 17 to June 01, 2014 and that AA rented the den at that address for \$500.00 a month from March 05 to April 01, 2014.

The tenant's agent testified that the landlord has provided a rent receipt showing that this new tenant paid \$250.00 on March 25, 2014 for two weeks rent between March 25 and April 07, 2014. The tenant's agent testified that as this receipt has only been signed by the landlord there is no prove to show that it is a legitimate receipt or that it has not been altered.

The landlord testified that this new tenant AA was 18 years old and wanted to rent the den for two weeks from March 25 to April 07. This new tenant was looking for work and had told the landlord that if he did not get any work his father would support him. The landlord testified that the other tenant JB called the landlord and informed the landlord that AA could not find work and asked if AA could still stay at the unit. The landlord testified that she contacted AA and was informed that his parents had refused to support him and he had to return to Ontario but JB had told him he could stay. The landlord testified that she told AA he could not continue to stay at the unit.

At the reconvened hearing the tenant testified that she had confirmed with AA that he had rented the unit from March 05 to April 19 and therefore as the landlord had rented the unit for March the landlord is not entitled to claim for a loss of rent for March. The tenant therefore seeks to have the original Monetary Order set aside and seeks a Monetary Order to recover double the security deposit as awarded to the tenant at the original hearing. The tenant refers to the email provided in evidence from AA for the review consideration.

The tenant calls her witness AA. The tenant asks the witness when he moved into the den. The witness responded that he moved in on March 05, 2014 and stayed until April 19, 2014 when he returned to Ontario. I asked the witness if he paid rent to the landlord. AA responded that he had paid \$420.00 for a month's rent for the den and an amount for the last month's rent. The witness amended this testimony to state that he paid an amount for a security deposit and the first month's rent.

The landlord asked AA if he recalls that he only stayed for two weeks from March 26 to April 07, 2014 and rent was \$495.00 a month and AA only paid \$250.00 for two weeks. AA responded that he moved in on March 05, and he paid \$420.00. AA asked why he would pay \$420 if he only lived there for two weeks.

The landlord asks AA if the other TT JB had contacted AA to ask him to say he moved in on March 05, 2014. AA responded that he has not heard from JB since JB went to the airport with him when he returned to Ontario on April 19, 2014. The landlord asked AA if he recalls the conversation he had with the landlord about AA's father not being willing to support AA. AA responded that he does recall the conversation but he had paid for a month's rent. As he had lived in the unit a little longer than a month the landlord used money from his security deposit to cover the extra time he stayed in the unit. The landlord asks AA how he could have stayed in the den when the landlord had re-rented the den to a new tenant on April 07, 2014. AA responded that he was still living at the unit on April 14, 2014 as there was a religious festival in Vancouver which he attended and then returned to the unit to live until April 19, 2014 when he had a flight home booked.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. The landlord has claimed the new tenant did not move into the rental unit or the den in question until March 25, 2014 and therefore argues that the landlord is entitled to the monetary award issued at the original hearing for unpaid rent for March. The tenant argues that she has evidence that the new tenant moved into the den on March 05, 2014 and that same tenant AA has attended this hearing to give sworn testimony that he did move in on March 05, 2014.

When one person's evidence is contradicted by that of the other then the person making the claim must provide corroborating evidence to meet the burden of proof. In this case the landlord has provided a rent receipt signed by the landlord and dated March 25. This receipt states that AA paid \$250.00 for two weeks rent from March 25 to April 07, 2014. The tenant has provided emails from AA and another tenant residing in that rental unit at the time, which state that AA moved into the unit on March 05, 2014. The tenant submits that the landlord could have written this receipt after the fact as it has not been signed by AA. AA has testified that he did move into the unit on March 05, 2014 until April 19, 2014 when he returned to Ontario. The landlord argued that this was not possible as the landlord had re-rented the den to new tenant on April 07, 2014; however, the landlord has provided insufficient corroborating evidence to support this claim.

I find the tenant's corroborating evidence and the testimony of the tenants witness to be more compelling concerning the date AA moved into the den, I therefore find the landlord is only entitled to recover unpaid rent for the first four days of March, 2014 due to the late Notice provided by the tenant. Consequently, I find the landlord is entitled to a monetary award of **\$63.87** for the first four days of March only. As the landlord was also awarded the amount of **\$55.24** for utilities at the last hearing this section of the landlord's claim remains unchanged. The landlord was also awarded the \$50.00 filing fee; however, as the tenant's claim also has merit to recover double the security deposit and the tenant had also applied to recover the \$50.00 filing fee I must offset the landlord's filing fee against that of the tenants.

The tenant was awarded double the security deposit of \$500.00 at the original hearing and this was offset against the landlord's monetary award. I therefore find the landlord is entitled to retain from the security deposit the amount of \$63.87 and \$55.24 to a total amount of **\$119.11** pursuant to s. 38(4)(b) of the *Act*.

The tenant is entitled to recover the balance of the security deposit of **\$380.89** pursuant to s. 38(6)(b) of the *Act*.

### Conclusion

Following the review, the director may confirm, vary or set aside the original Decision or Order. I have varied the original Decision and set aside the original Monetary Order for the landlord.

The landlord is entitled to retain the amount of **\$119.11** from the tenant's security deposit.

I HEREBY FIND in partial favor of tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$380.89**. The Order must be served on the landlord. If the landlord fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

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: December 04, 2014

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Residential Tenancy Branch

