



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, FF  
                                 CNC, MNDC

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The parties attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, photographs provided to the Residential Tenancy Branch by the landlord were not provided to the tenant. The Rules of Procedure require parties to exchange all evidence that they intend to rely on, and since the tenant has not received a copy of the photographs, that evidence cannot be considered. All other evidence has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the landlord agreed that the style of cause be amended on the landlord's application to spell the landlord's name the same way that it is spelled on the tenant's application, and the style of cause shown on the frontal page of this Decision is the amended style of cause.

Also, during the course of the hearing, the parties agreed that the tenancy will end on July 15, 2015 at 3:00 p.m. and the landlord will have an Order of Possession effective that date and time.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment of the rental unit?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on April 15, 2015 and the tenant still resides in the rental unit. A tenancy agreement has been provided which states that rent in the amount of \$700.00 per month is payable on the first day of the rental period, however the parties had agreed that rent was due on the 1<sup>st</sup> day of each month and the landlord collected a pro-rated amount of rent from the tenant for the first month of the tenancy. The tenancy agreement also provides for a security deposit in the amount of \$350.00, however it also states, "In lieu of work," and the landlord testified that the tenant was to complete a list of work for the landlord, and the parties verbally agreed to decrease rent to \$600.00 per month. The landlord did not get the list of work to the tenant and the landlord advised the tenant in writing that the arrangement was not working out and that effective June 1, 2015 the rent would be \$700.00 per month.

On April 15, 2015 the landlord collected \$350.00 for April's rent as well as \$600.00 for May's rent on May 1, 2015. The tenant failed to pay any rent for June or July, 2015 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated June 2, 2015 and contains an effective date of vacancy of June 12, 2015 for \$700.00 of unpaid rent that was due on June 1, 2015 and \$30.00 of unpaid utilities. The landlord claims \$1,400.00 for unpaid rent for June and July, 2015.

The landlord also served the tenant with a 1 Month Notice to End Tenancy for a copy of which has been provided. The notice is dated May 5, 2015 and contains an expected date of vacancy of June 30, 2015. The reasons for issuing it are:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant has caused extraordinary damage to the unit/site or property/park.

The rental unit is a basement suite, and the landlord resides in the upper unit. The rental unit was rented to the tenant without cooking facilities, and the tenant was to get a hot plate. The landlord purchased a microwave oven for the tenant from a yard sale that the landlord's parent had, and claims \$50.00 from the tenant.

The landlord also testified that the tenant painted the deck of the house, which was a bare, treated wood, with a mixture of colored paint and stain, some of which was for interior and some for exterior surfaces, without the landlord's permission or knowledge using the landlord's supplies taken from the landlord's furnace room. The tenant apologized to the landlord saying that the tenant had tried to match it to the trim of the house, but the tenant is color blind and instead of chocolate brown, the colors on the deck are reddish. Colors are not consistent, and the deck looks tie-dyed. The tenant went to Home Hardware to get paint remover, and has provided a copy of a receipt in the amount of \$44.12, however, the landlord disagrees that will suffice. The landlord has provided an estimate of the cost to strip it and re-stain in the amount of \$790.00 + 5% GST. The estimate also states that: "...It appears this deck was painted with a mix of interior and exterior latex paint of different colours." "This was also a poor, sloppy paint job." The landlord claims \$790.00 for the repair. The deck is about 6 years old, and the stairs have collapsed, but the landlord does not claim any amount for that repair.

The landlord also claims \$200.00 for paint and supplies that the tenant used without the landlord's permission. The landlord had a full gallon of the color to match the trim of the house, but it's gone, other paint is gone, as well as rollers and other painting supplies and nothing has been returned to the landlord.

The landlord further testified that the landlord has a cleaning company and gave some work to the tenant for which the tenant was paid in cash. The tenant was also loaned \$180.00 during the first 2 weeks of the tenancy because she needed money, and the landlord claims that amount from the tenant.

With respect to the tenant's claim, the landlord disagrees that the tenant has been harassed. The landlord attended the rental unit once for a TV box, and the tenant

refused to return it and slammed the door in the landlord's face. The landlord knocked again twice, was not intimidating, and the tenant refused to answer the door. On another occasion, the tenant was at the landlord's residence yelling at the landlord. The landlord did not want to talk to the tenant and tried to stay away. The landlord's boyfriend intervened, saying only one sentence to the tenant. The tenant threatened to call the police, and the landlord invited that. However, the landlord called the police and offered a police file number as evidence.

The landlord seeks monetary compensation from the tenant in the amount of \$1,400.00 for unpaid rent, \$50.00 for the microwave oven, \$200.00 for paint and supplies, \$790.00 for deck repair, and \$180.00 that was loaned to the tenant, for a total of \$2,620.00, as well as recovery of the \$50.00 filing fee.

**The tenant** testified that the \$180.00 the landlord gave the tenant was not a loan, but payment for work that the tenant completed at the landlord's request. The tenant further testified that the landlord was compensated \$250.00 for work that the tenant did, and the \$180.00 was not a loan, but payment for that work and the landlord pocketed the rest. Further, the landlord was given \$150.00 for work the tenant did on another occasion, and the landlord only paid the tenant \$50.00.

The tenant further testified that the tenant has post traumatic stress disorder, and the landlord is aware of the tenant's stress-related medical issues. The tenant has a short life expectancy as a result, and each stress-related incident takes time off her life. The tenant has been to hospital 6 times during this tenancy due to stress caused by the landlord, but was not admitted on any of those occasions. The landlord and male friends of the landlord have yelled at the tenant calling the tenant a bitch, and the landlord has caused nothing but grief since the tenant filed the application for dispute resolution. The landlord also came banging on the door 6 times looking for a digital box for the TV, and had her boyfriend talk to the tenant about moving out after the landlord had told the tenant that the boyfriend is abusive verbally. The tenant didn't know what would happen next which caused additional stress.

The tenant further testified that on or about June 13, 2015 the landlord was having a party for her child's birthday and had notified the tenant in a note stating that the tenant had to leave. The whole yard was over-run with people who were talking about the tenant. The landlord was pointing at the tenant while talking to other people and again the tenant didn't know what was going to happen next. The tenant went immediately to the hospital and then to a friend's home. The party was wrapping up when the tenant arrived at home around 11:00 p.m.

On the tenant's birthday, June 17, 2015, the landlord arrived at the rental unit with a male friend to get the digital box for the TV. The tenant asked them to leave. They were there for awhile and then left yelling, "Bitch." The tenant went to the hospital believing she was having a heart attack due to numbness in her hands.

With respect to the landlord's claim, the tenant testified that she moved into the rental unit on April 14, 2015 and gave the landlord \$350.00. On April 28, 2015 the tenant gave the landlord \$400.00 for May's rent. The parties had a conversation wherein the landlord said that an additional \$200.00 was required instead of \$300.00 due to work that the tenant did for the landlord. The \$200.00 was paid on April 30, 2015. Then the landlord wanted \$700.00 for June's rent, but the tenant disagreed, and paid the landlord \$600.00 in cash on June 1, 2015, but the landlord didn't issue any receipts. The tenant also paid \$30.00 for the TV service for May and told the landlord she would give another \$30.00 for June but on June 10, 2015 the landlord pulled the TV connection and the tenant had no TV except for 17 days during June and July, 2015.

The tenant also testified that the landlord locked the laundry room door from the landlord's side about a week ago, which removes any emergency exit for the rental unit.

The landlord has caused unnecessary stress to the tenant. It is hard on her health, and has thereby breached the tenant's right to quiet enjoyment of the rental unit, and the tenant claims \$3,000.00 from the landlord. Copies of notes from a physician have also been provided.

### Analysis

Firstly, the *Residential Tenancy Act* permits me to make orders respecting a tenancy, not with respect to an employment arrangement between the parties or a personal loan. Therefore, the landlord's application for \$180.00 is dismissed. Similarly, I find that no security deposit was collected by the landlord.

Where a party makes a claim for damages against another party, including damages for loss of quiet enjoyment, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I find that neither party has complied with the *Residential Tenancy Act*. A landlord must give receipts for money received from a tenant in cash and a tenant must not paint a rental unit without the landlord's consent. Further, a landlord cannot rent a unit without cooking facilities. The parties were told at the hearing that the microwave oven provided by the landlord is a cooking facility that belongs to the rental unit. The landlord has not provided any evidence with respect to its cost, and the landlord's application for \$50.00 is dismissed.

I also find that the landlord agreed to reduce rent for the month of May, 2015 by \$100.00; neither party disputes that. The landlord claims unpaid rent in the amount of \$700.00 for each of the months of June and July, 2015. The tenant disputes that rent would be \$700.00 after that and testified that she paid the landlord \$600.00 on June 1, 2015 in cash for which the landlord did not give a receipt. Where it boils down to one person's word over another, the claim has not been proven. There is nothing in writing that reduces rent and no evidence from the landlord of any collection of rent. I find that the landlord is owed \$100.00 for June, 2015. With respect to rent for the month of July, 2015, the tenant does not dispute that no rent has been paid however the parties have agreed to end this tenancy effective July 15, 2015 and I find that the landlord has established a monetary claim for half of the month, or \$350.00.

With respect to the landlord's claim for damage to the deck, I accept the testimony and evidence provided by the landlord that the tenant caused the damage by painting it without the landlord's knowledge or permission. The *Residential Tenancy Act* states that a tenant must repair any damage caused by a tenant during the tenancy, and I accept the estimate provided by the landlord. However, I also refer the Residential Tenancy Branch Policy Guideline 40 which shows that the useful life of exterior painting is 8 years. The landlord testified that the deck was about 6 years old, and I find that the landlord has established a pro-rated amount of \$197.50, plus 5% GST, for a total of \$207.37. ( $\$790 / 8 \times 6 = \$592.50$ .  $\$790 - \$592.50 = \$197.50 \times .05 = \$9.87$  GST.  $\$197.50 + \$9.87 = \$207.37$ )

With respect to the landlord's claim for paint and loss of painting supplies, the landlord has not provided any evidence of the items used or the costs, and I find that the landlord has not established element 3 in the test for damages.

With respect to the tenant's application for a monetary claim for loss of quiet enjoyment, I refer to Residential Tenancy Policy Guideline 6, which states, in part:

“ . . . in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises

unfit for occupancy for the purposes for which they were leased. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

"Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

"Aggravated damages are those damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour."

In this case, the tenant claims intimidation, distress and humiliation, and suffers from post-traumatic stress disorder. The tenant also testified that during the incidents that the tenant described, the tenant didn't know what was going to happen next. I am not satisfied that anything was going to happen next. The landlord testified that she only attended the rental unit on one occasion to get a digital TV box and the tenant slammed the door and the landlord knocked 2 more times. The tenant testified that the landlord was there 6 times, then testified that the landlord was there once for awhile, and that she had been hospitalized on 6 occasions due to the landlord's actions. However, the tenant was not admitted to hospital on any of those occasions. Further, the landlord issued a notice to end the tenancy for cause claiming that the tenant disturbed another occupant or the landlord, jeopardized the landlord's health or safety or lawful right, put the landlord's property at significant risk and caused extraordinary damage to the rental property. The landlord also served the tenant with a notice to end the tenancy for unpaid rent. Neither of those notices can be considered harassment, as it is a landlord's right to protect property and to collect rent. I accept that as a result of the tenant's health, she is fragile, however, I am not satisfied that the tenant has established elements 2 or 4 in the test for damages, or that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy. The tenant's application for aggravated damages for loss of quiet enjoyment is dismissed.

In summary, I find that the landlord has established a claim in the amount of \$100.00 for June's rent, \$350.00 for July's rent, and \$207.37 for the deck. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee, for a total of \$707.37. The tenant's application for monetary compensation is dismissed.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective July 15, 2015 at 3:00 p.m., by consent, and the tenancy will end at that time.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$707.37.

The tenant's application is hereby dismissed.

These orders are final and binding and may be enforced.

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: July 21, 2015

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Residential Tenancy Branch



