



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

The parties confirmed during the hearing that the landlord had not yet returned the tenants' security deposit. I advised both parties that since the landlord had not requested to retain the security deposit as part of this Application that I would not be considering the disposition of the deposit at this hearing. I advised both parties that they remain at liberty to file separate Applications seeking either to retain (the landlord) or recover (the tenants) the security deposit within any applicable deadlines.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for the replacement of a fence and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 1, 2014 for a 3 month fixed term tenancy beginning on February 1, 2014 that converted to a month to month tenancy on May 1, 2014 for a monthly rent of \$1,350.00 due on the 1<sup>st</sup> of each month with a security deposit of \$675.00 paid. The parties acknowledged the female tenant vacated the rental unit in December 2014.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on February 18, 2015 with an effective vacancy date of March 31, 2015 citing the tenant was repeatedly late paying rent and that the tenant had failed to pay a security or pet damage deposit within 30 days of it being required. The male tenant confirmed he vacated the rental unit in accordance with this Notice.

The landlord submits the tenants failed to pay rent for the month of September 2014 and that despite repeated requests via text message the tenants failed to pay anything towards September 2014 rent. The female tenant testified that she had paid the landlord by way of a couple of payments and that all was paid by mid December 2014. The tenant could not recall what dates she made these payments nor did she provide any documentary confirmation of them.

The landlord submits the tenants also failed to pay rent for the month of March 2015. The male tenant confirmed that he did not pay rent for the month of March 2015. He stated that the landlord had told him, prior to issuing the 1 Month Notice to End Tenancy for Cause, the landlord wanted to end the tenancy so that he could renovate the rental unit and then sell it.

The male tenant stated that as such he felt he was entitled to the 1 month's compensation that would be provided to a tenant if the landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (for renovations or as part of a term of an agreement for sale of the property).

The landlord seeks compensation for the repair of a fence on the property. The landlord has submitted photographs of the fence (at the end of the tenancy) and asserts that because of the tenants' dog he had to replace the fence and complete work on the retaining walls. The landlord provided no evidence of the condition of the fence or retaining walls prior to the start of the tenancy or any receipts for any work completed.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for rent in the amount of \$1350.00 for the month of September 2014 and considering the tenant's testimony that she paid the landlord in full by December 2014, the burden of proving that rent was not paid in cash, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

In these circumstances the landlord's failure to provide receipts for cash payments made during this tenancy can significantly impair his ability to prove that the tenant did not pay a portion of rent. The landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate his claim that the tenant did not pay any of the September 2014 rent. I dismiss this portion of the landlord's claim.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement; or
- b) The tenant is repeatedly late paying rent.

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or

a close family member of the purchaser intends in good faith to occupy the rental unit;

- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
  - i. Demolish the rental unit;
  - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
  - iii. Convert the residential property to strata lots under the Strata Property Act;
  - iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
  - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
  - vi. Convert the rental unit to a non-residential use.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

However, in the case before me, I find the tenants did not receive a notice to end tenancy under Section 49 but rather the notice was issued under Section 47 of the *Act*. As such, and despite the male tenant's assertion as to the reason why the landlord issued the notice I find tenant was not entitled to receive compensation equivalent to one month's rent. Therefore, I find the tenants owe the landlord rent for the month of March 2015.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Despite the landlord's submission of photographic evidence as to the condition of the fence at the end of the tenancy, I find the landlord has failed to establish the condition of the fence at the start of the tenancy and as such he cannot confirm that any damage was a result of the tenancy. Further the landlord has failed to provide any evidence of any costs associated with repairing the fence.

Based on the above, I find the tenant has failed to establish the tenants failed to comply with their obligations under Section 37 of the *Act* in regard to the fence. Therefore, I dismiss this portion of the landlord's claim.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,375.00** comprised of \$1,350.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application as he was only partially successful in his claim.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: September 28, 2015

---

Residential Tenancy Branch

