



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction and Preliminary Matter

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The Landlord testified that he did not receive the Tenant's evidence. Despite this, he confirmed he was willing to proceed as he preferred to have the hearing "over with". No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed that they attended a previous arbitration on April 21, 2015 wherein the issue of the security deposit had been decided. In a decision dated May 14, 2015 the Arbitrator awarded the Tenant return of double her security deposit. Accordingly, the Landlord withdrew his application for an Order permitting him to retain the security deposit.

### Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began December 9, 2014 for a fixed six month term. The monthly rent was \$1,095.00 payable on the first of the month.

#### *April 21, 2015 Arbitration*

As noted, the parties attended a previous arbitration on April 21, 2015. I find the following findings made in the May 14, 2015 decision to be relevant to the issue before me:

- In January 2015 there was a significant plumbing event, preceded by electrical problems and pest problems.
- The Landlord had workers promptly respond to the electrical, plumbing and rodent issues, however the combined effect of these issues did result in a reduction in the value of the tenancy.
- The Tenant was led to believe she could stay in the main house until the rental unit was repaired.
- The problems in the rental unit were not properly repaired before the stop work orders were put in place.
- The Landlords changed the locks contrary to the advice from the police, and removed the Tenants belongings and pet. These actions contributed to the loss of quiet enjoyment suffered by the Tenant.
- The effect of the above was that the value of the Tenancy in January was reduced by \$750.00.

#### *Landlord's Evidence in Support of his claim for monetary compensation*

The Landlord claimed the Tenant was still in occupation of the rental property as of February 2, 2015 such that he claimed monetary compensation in the form of rent for the month of February 2015.

The Landlord stated that he was out of Canada in February of 2015 and as such does not know when the Tenant moved out. He claimed she abandoned the rental unit

sometime after February 3, 2015, and that at no time did she provide written notice to end her tenancy.

The Landlord stated that he re-rented the unit in June of 2015.

L.K. testified on behalf of the Landlord. He stated that on February 2, 2015 the Landlord and his wife were away and he was at the property acting as an emergency contact. He stated that the Tenant was supposed to be moved at that time, yet he saw her in the main house.

*Tenant's evidence in response to Landlord's monetary claim*

The Tenant stated that she moved from the rental unit on January 31, 2015. She stated that she provided video evidence in the previous arbitration confirming she moved out on that date. That video evidence was not before me. The Tenant also stated that she submitted over 80 photos in the previous arbitration which confirmed the rental unit was not habitable. Those photos were also not before me.

The Tenant further testified that she moved into a new rental and in support she provided in evidence a copy of her rent cheque dated January 31, 2015.

The Tenant testified that she previously filed for arbitration as the Landlord locked her out of the rental unit, moved out her belongings and her pet. She stated that she was awarded compensation as a result of the Landlord's behaviour.

*Landlord's Reply*

The Landlord provided a brief reply. He stated that a stop work order was made on all of his properties in the latter part of January 2015 as a means to "get his attention".

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. that the other party violated the *Act*, regulations, or tenancy agreement;

2. that the violation caused the party making the application to incur damages or loss as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

In this case, the Landlord claims the Tenant was still in occupation of the rental unit as of February 2, 2015. In support he relies on the testimony of L.K. who acted as a property manager. The Tenant claims she moved on January 31, 2015.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further corroborating evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case I am not able to reconcile the evidence of the Tenant and L.K. and as such I am not able to find that the Tenant continued in occupation of the rental unit as of February 2, 2015.

The Landlord failed to submit any evidence to show that the problems in the rental unit were repaired before the stop work orders were put in place at the end of January 2015. Accordingly, it is not plausible that the Tenant continued to reside in the rental unit. It is also not possible for the Landlord to claim loss of rent for February 2015, as the rental unit was not habitable and therefore not rentable.

The Arbitrator at the April 21, 2015 hearing also found that the Landlord changed the locks contrary to the advice from the police, and removed the Tenants belongings and pet. The Tenant provided testimony at the within hearing which confirmed that she was locked out of the rental unit. I accept her evidence in this regard. In doing so, the Landlord ended the tenancy.

The Landlord's witness, L.K., testified he saw the Tenant in the main house, not the rental unit, on February 2, 2015. The Landlord vehemently argued that the Tenant was not permitted in the main house. Notably, the Arbitrator at the April 21, 2015 hearing found that the Landlord had given permission for the Tenant to reside in the main house while the rental unit was uninhabitable. The Landlord failed to provide any evidence at the within hearing which could support a different finding.

In all the circumstances I find that the Landlord failed to prove that he suffered a loss of \$1,095.00 in rent for February 2015, and that the Tenant should be ordered to compensate him this amount. It is notable that the Arbitrator at the April 21, 2015 hearing found that the value of the January tenancy was reduced by \$750.00; as such, at most the Landlord might have been able to argue was a loss of \$345.00 representing the balance of the monthly rent. I find he has not proven this loss either.

As the Landlord failed to prove the Tenant continued in occupation, and failed to prove the rental unit could have been rented to others, his claim is dismissed. Having been unsuccessful he is not entitled to recover the filing fee.

### Conclusion

The Landlord's application is dismissed in its entirety.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 09, 2015

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Residential Tenancy Branch

