



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

In making this application the landlord had requested an Order of Possession; however, I heard that the tenancy had already ended and the landlord had already regained possession of the rental unit. Therefore, I found the landlord's request for an Order of Possession unnecessary and I do not provide one with this decision.

The tenant submitted that she assumed the landlord had provided me with a copy of a letter that she had written to the landlord at the end of the tenancy. I advised the tenant that I was not in receipt of such a letter or any documentation from either party for that matter. The tenant was of the position that the letter was particularly important document. Accordingly, I proceeded to hear this case based on verbal testimony only and I permitted the tenant to read the letter aloud during the hearing.

The tenant's father questioned the enforceability of the tenancy agreement or the Act against the tenant since the tenant was younger than 19 years old when she executed the tenancy agreement. Section 3 of the Act was reviewed with the parties and I informed the parties that the Act applies to minors. Below, I have reproduced section 3 for the parties' further reference.

**Act applies to tenancy agreement with a minor**

**3** A person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this Act and the regulations are enforceable by and against the person despite section 19 of the *Infants Act*.

[reproduced as written]

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid and/or loss of rent from the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

I heard the parties executed a written tenancy agreement for a tenancy that commenced in April 2015 on a month to month basis. I heard that the tenant paid a security deposit of \$375.00 and the monthly rent of \$750.00 was due on the 1<sup>st</sup> day of every month. The tenant moved out of the rental unit May 31, 2015.

The landlord submitted that the tenant did not give sufficient notice to end the tenancy. Rather, the landlord found a letter written by the tenant or tenant's father on May 31, 2015 the same day the tenant vacated the unit. The landlord testified that she started advertising the rental unit on-line right away but that qualified tenants were not secured for three months. The landlord seeks to recover unpaid and/or loss of rent from the tenant for the month of June 2015.

The tenant's father submitted that in the second or third week of May 2015 text messages were exchanged between the parties and the landlord was notified that the tenant would be moving out.

The tenant explained that the landlord approached her and advised her that there had been a complaint to the strata council about the rental unit being an illegal suite and that the landlord asked her to lie to anybody who asked about her living arrangement. The tenant acknowledged that the landlord advised her that it would take a long time and more complaints before the tenancy were to end; however, the tenant submitted that she felt very uncomfortable having to lie about her living arrangement.

The tenant was of the position that the landlord misrepresented the legality of the basement suite to her when entering into the tenancy agreement. The tenant pointed to the rental unit being an illegal suite as a basis for not owing the landlord rent for June 2015.

The landlord responded by stating that she did not disclose nor deny the legality of the basement suite to the tenant. The landlord stated that the tenant did not ask about it and they had been no discussion about it when the tenancy formed. The landlord explained that she advised the tenant about the letter she received from the strata council to give the tenant a “heads up” but that she did not require the tenant to lie about the living arrangement. Despite the rental unit being illegal at the time the landlord submitted that the legal status does not disentitle the landlord to the remedies available to her under the Act.

### Analysis

The Act provides for ways a tenancy ends. In order to end a month to month tenancy the tenant must give a full month of written notice to the landlord. To give a notice it must be given in one of the ways provided under section 88 of the Act. The Act does not recognize text messages as written notice that is given in a manner that complies with the Act. Rather, the only written notice given to the landlord in this case was the written letter of May 31, 2015. It was undisputed that the tenant also vacated the rental unit May 31, 2015 without paying rent for June 2015.

The Act provides that where a written notice to end tenancy does not have an effective date that complies with the Act, the effective date automatically changes to comply. As such, I find the earliest effective date the tenant could have given by way of a written notice served in May 2015 would have been June 30, 2015. Accordingly, the tenant remained obligated to pay rent for June 2015.

The tenant asserted the landlord misrepresented the legality of the rental unit. Misrepresentation refers to a false statement of fact being made by one party to another party which has the effect of inducing that party into the contract. Where misrepresentation is established the other party that was relied upon the false statement(s) may be entitled to rescind the contract or seek damages for losses that that resulted from the misrepresentation. In this case, the landlord stated the tenant did not make any enquiry about the legality of the basement suite and the landlord did not inform the tenant the basement suite was legal. The tenant did not deny the landlord's submissions. Therefore, I am unsatisfied the landlord made knowingly false statements

to the tenant to induce the tenant to enter into the tenancy agreement and I am of the view the tenant did not have the right to rescind the contract due to misrepresentation.

Although I have found that the landlord did not misrepresent the legal status of the basement suite, it remains undisputed that the basement suite was not legal during this tenancy. The tenant asserted that the rental unit was in violation of municipal zoning by-laws and strata by-laws. I have considered whether that in itself is sufficient to exempt the tenant from giving sufficient notice to end the tenancy and deny the landlord's claims against the tenant. A rental unit's legal status is addressed in Residential Tenancy Branch Policy Guideline 20: *Illegal Contracts*. The policy guideline provides, in part:

This guideline deals with situations where a landlord rents premises in a circumstance where the rental is not permitted under a statute. Most commonly this issue is raised where municipal zoning by-laws do not permit secondary suites and rental of the suite is a breach of the zoning by-law. However municipal by-laws are not statutes for the purposes of determining whether or not a contract is legal, therefore a rental in breach of a municipal by-law does not make the contract illegal.

Recently the Courts have adopted a more flexible approach to the issue of statutory illegality and enforcement of contracts made in breach of a statute. Before finding a contract made in breach of a statute is void, the following factors will be examined:

- The serious consequences of invalidating the contract
- The social utility of those consequences
- The class of persons for whom the legislation was enacted to determine whether a refusal to enforce the contract would affect other than that group

[reproduced as written]

In keeping with policy guideline 20 it is important to recognize that several thousand rental units in existence are in violation of zoning by-laws and that invalidating tenancy agreements for such rental units would prove highly detrimental to tenants since it would strip rights from tenants that the Act is intended to protect. Therefore, I find the tenancy agreement between the parties to be valid and enforceable meaning it is valid and enforceable for both parties.

With respect to the disputed testimony I heard about the landlord's request that the tenant lie about her living arrangement, I find such a request, if it was made, insufficient to entitle the tenant to end the tenancy without sufficient notice. The tenant was not

obligated to lie and could have just as easily not done so. If, as a result, the landlord was required to remove the basement suite, the landlord had been required to give the tenant at least one month of written notice under the Act.

In light of the above, I find the landlord has established an entitlement to receive one full month of written notice from the tenant in order for the tenant to end the month to month tenancy. The tenant violated this obligation and I find the landlord entitled to recover the loss of rent for the month of June 2015 from the tenant. Therefore, I grant the landlord's request to recover \$750.00 from the tenant.

I award the landlord recovery of the filing fee she paid for this application. I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord. Accordingly, the landlord is provided a Monetary Order in the net amount of \$425.00 [calculated as: \$750.00 rent + \$50.00 filing fee – \$375.00 security deposit]

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$425.00 to serve and enforce as necessary.

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 11, 2015

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Residential Tenancy Branch

