



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MT, CNR, MNDC, FF

### Introduction

In the first application, by filing number (second by date of filing) the landlord seeks an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent. She also seeks a monetary award for unpaid rent.

In the second application the tenant seeks to cancel one, and perhaps two, ten day Notices to End Tenancy for unpaid rent and for an extension of time to apply to do so. She also seeks to recover \$150.00 for dump fees, \$3300.00 in rent and \$300.00 for damaged property.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during this hearing show on a balance of probabilities that this tenancy has ended as the result of a ten day Notice? Is the landlord owed money? Is the tenant entitled to a monetary award for any of the items claimed?

### Background and Evidence

The rental unit is a house with a two bedroom suite in its basement. There is no written tenancy agreement.

The parties agree that the tenant rented the entire house starting October 1, 2015, on a month to month basis. They agree that the tenant paid a \$550.00 security deposit.

They disagree about what the rent was. The landlord claims the monthly rent was \$1250.00 but that after the first month it was reduced to \$1100.00 and the tenant assumed Hydro costs. The tenant says it was \$1100.00 right from the start.

In any event, the landlord says the tenant paid the rent for October, November and December. She says the tenant reduced her December rent by \$150.00 for repair work done around the home and that she agreed to it.

The landlord says the tenant held back \$435.00 of January's \$1100.00 rent to pay for a plumber, without the landlord's consent. She says the tenant paid only \$220.00 for February's rent, unilaterally applying her \$550.00 security deposit to the rent and unilaterally withholding an additional \$220.00 for the plumber's repair bill.

The landlord says the tenant gave verbal notice in February that she would be vacating the premises at the end of February. There is no evidence of any written notice from the tenant, however, it appears that on March 1, the landlord's son arrived to move into the main floor of the home and the tenant was moving out.

The tenant had been occupying the main floor and renting out the suite below to her relative and friend, the witness Ms. L.H.. On March 1, Ms. L.H. either left or had already left the lower suite and the tenant moved in.

The landlord says it was her plan that her son would occupy the main floor and that she herself would be moving into the basement suite on March 1. She says that as the result of the tenant taking occupancy there, she was left on the street; only obtaining alternate accommodation, an apartment, in late March.

The tenant paid the landlord \$500.00 as "rent" for the basement suite for March. The landlord claims that this was \$50.00 short of the amount agreed.

The tenant paid the landlord \$500.00 for April for "rent" for the basement suite. She says that the tenant is a squatter.

The tenant claims she took \$350.00 of the January rent to pay for a portion of the bill from a plumber she had hired to fix a leaking tub that was threatening the electrical wiring in the basement. She produces a plumber's bill dated January 18, 2016 in the amount of \$630.00 as evidence of the leak repair work.

She says that the next month, February, she reduced her rent by \$280.00, being the remainder of the plumber's bill and credited herself with her security deposit of \$550.00, then paid the remainder of the rent of \$220.00. She wrote it down on a document entitled "RECEIPT No.07." She based the amount paid on a monthly rent of \$1050.00. At hearing she could not offer any explanation how the monthly rent had changed from \$1100.00, the rent amount she put forth at the start of the hearing, to \$1050.00.

The tenant denies giving any verbal notice to end her tenancy. She says the landlord told her she must move out. She could not find a place at the end of February and so she moved into the basement. She says that was "the best she could do." She says the landlord demanded \$550.00 for March rent for the basement suite and an extra \$50.00 to turn the water back on.

The tenant says the landlord consented to her taking the plumbing bill off of rent.

The tenant's witness Ms. L.H. testified that she rented the lower suite from the tenant from October 2015 to and including February 2016. She testified about a leak that occurred in March 2016 into an electrical fixture in the basement suit and about a rainfall caused flood on moving day, February 29, 2016. She testified about the plumber who rendered the January 18, 2016 bill.

### Analysis

Each side was imprecise in their evidence about what had been paid or received, particularly for the month of January 2016. The calculations below are derived from what can best be determined from that evidence.

The landlord has put herself in a very difficult position. She has failed to prepare and sign a written tenancy agreement with the tenant, as she is required to do by s. 13 of the *Residential Tenancy Act* (the "RTA"). She has failed to conduct a move-in or move-out inspection with her tenant and prepare a report as required by ss. 23 and 35 of the RTA.

I find that the rent for the home was \$1100.00 per month, due on the first of each month.

I find that whether or not there was a written notice to end tenancy, this tenancy ended by mutual agreement on February 29, 2016. I think it unlikely that the tenant would have credited herself with the deposit money against February rent, has she not considered it her last month's rent.

As a result, this tenancy, the tenancy for the entire house at a rent of \$1100.00, ended February 29, 2016.

The evidence is that the tenant moved to the basement suite and started paying the landlord money for that rental unit. That is the essence of a tenancy agreement. In the absence of any written agreement between the parties to the contrary, I find that the tenant is now the tenant of the basement suite at a monthly rent of \$550.00 under a new tenancy agreement.

In these circumstances, the landlord's claim for an order of possession under the original tenancy agreement for the whole house must be dismissed.

In any event, the tenant received two ten day Notices for different amounts on the same day, March 2, 2016. The giving of two different Notices to End Tenancy for unpaid rent on the same day but for different amounts, leaves ambiguous the amount the tenant is required to pay to cancel the two Notices. In such circumstances, neither Notice can be considered to be valid.

I find that the tenant was not entitled to unilaterally offset the \$630.00 plumber's bill against rent. Section 26(1) of the *RTA* provides:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Nevertheless, the landlord acknowledges that the work was proper work and does not dispute the bill. So, either way, the tenant is or was entitled to be reimbursed for it.

The tenant withheld \$350.00 from the January rent towards the plumber's bill and a further \$280.00 from the February rent.

I accept the landlord's evidence that the January rent was short \$435.00. The tenant has failed to establish any good cause for withholding more than the aforesaid \$350.00. I find that the landlord is owed \$85.00 for unpaid January rent.

The tenant's \$280.00 withholding for the plumber's bill in February has been established. Towards remainder of \$820.00, the tenant paid \$220.00 and offset the \$550.00 deposit money. That leaves a balance owing of \$50.00. I find that the landlord is owed \$50.00 for unpaid February rent.

The tenant has failed to adduce evidence about any dump fees during this hearing. I dismiss that item of her claim.

She has failed to adduce evidence about any property damage during this hearing. I dismiss that item of her claim.

The tenant has failed to provide grounds to recover rent or to adduce cogent evidence to establish such a claim during this hearing. I dismiss this item of her claim.

The parties raised the issue of a possible electrical fire in the basement bathroom on or about March 4. I find that that claim, or any relief relating to that claim, has not been fairly raised in either application or any amendment to it and so I dismiss it. Either party is free to re-apply if she considers it has caused her loss or expense.

Similarly, the landlord testifies about March and April rents being short. Again, those claims have not been fairly raised by the application or any amendment to it. I dismiss them, but with leave for the landlord, not the tenant under a different tenancy agreement, to re-apply.

### Conclusion

The landlord's claim for an order of possession is dismissed.

The landlord is entitled to a monetary award totalling \$135.00. Given her limited success and the fact that she has failed to comply with the *RTA* in preparing a written tenancy agreement, I decline to grant recovery of any filing fee. The landlord will have a monetary award against the tenant in the amount of \$135.00.

The tenant's application is dismissed. I decline to grant her recovery of any filing fee.

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: April 13, 2016

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Residential Tenancy Branch