



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR CNR OPR MND MNDC RPP AAT PSF

### **Introduction**

Both parties made Applications and agreed the 10 Day Notice to End Tenancy dated May 3, 2016 was served (the landlord said personally and the tenant said posted on her door). Both parties agreed they received each other's Applications for Dispute Resolution although the landlord said she received only 3 pages from the tenant which contained no details of her monetary claim other than the total claimed of \$1238. The landlord requests pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An order of Possession and a Monetary Order for unpaid rent;
- b) To recover filing fees for the application..

The tenant requests pursuant to the Act:

- c) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- d) For access to the property to retrieve her personal property;
- e) Compensation for denial of access to her holiday trailer for 3 months, for 2 hours of her labour in building a fence, clearing the driveway 5 times, hauling water for 30+ days of no water, 4 hours to clean manure from the yard, and for dealing with water pump issues plus continual harassment about there being no water;
- f) Compensation for firewood.

### **Telus Problem:**

The conference began at 10:30a.m. The landlord's Application was discussed. At approximately 11:05a.m., in the middle of discussing details of the tenant's monetary claim, the conference line was cut abruptly. I dialed into the conference again but the Telus operator said lines were busy. I called Telus about the problem and the operator patched me into the conference again at approximately 11:13a.m. Only the landlord was on the line. She said that when the conference was cut, she dialed back in successfully. The tenant never rejoined the conference although it continued until 11:30a.m. Nevertheless, I asked the landlord to respond to each of the tenant's claims.

As she had never been served with this evidence, I read to her the tenant's evidence and requested a response.

**Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is unpaid rent and they are entitled to an Order of Possession and a monetary order for unpaid rent?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that she is entitled to a rent rebate or compensation? If so, to how much?

**Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The landlord stated the tenancy commenced October 15, 2015, it is a month to month tenancy, rent was \$500 a month and a security deposit of \$250 plus a pet damage deposit of \$250 were paid. The landlord claims the tenant never paid \$250 for October 15-31 which was due October 15, 2015. A lease agreement in evidence has these terms. The tenant said she could not move into the premises until October 25, 2016 because they were not vacant and she received no keys until November 3, 2016. The landlord accused her of lying and said she came on October 13<sup>th</sup> to sign the lease and the place had been vacant for two months. The tenant said the lease was not signed until October 21, 2016.

The tenant agreed she had not pay \$500 rent for May due to other issues caused by the landlord. She vacated May 28, 2016 and has retrieved all her belongings with the help of the RCMP so that is no longer an issue.

The tenant claims on her application for compensation of \$1238 as follows:

1. \$40: for two hours work to build a fence as the landlord's geese were attacking me. The landlord said the tenant had 2 puppies so she built a fence for her own use. She said the geese and chickens were contained in fencing they built themselves and the tenant had free access to her own unit.
2. \$300: cleaning snow off the driveway 5 times. The landlord pointed to the lease that said she had to clean snow off her own part of the driveway and premises. She said the tenant called the head landlord once and he came and cleaned all the snow. The landlord said she observed the tenant twice clearing snow off her own part of the premises per the lease agreement but said she had not cleaned the landlord's areas.
3. \$500: for hauling water for 30 days when there was no water. The landlord said this is a well system and they have never had a problem until this tenancy. She said the pump controls are in the tenant's unit and the tenant continually

switched the water off so they would have no water, one time for two days while she was away. The landlord filed a letter from a prospective room mate of the tenant who said she observed the tenant flipping off the breaker so the landlord would have no water. The room mate also noted she observed the tenant yelling and swearing at the landlord and that the tenant told lies to her and the landlord regarding her prospective sub leasing from the tenant.

4. \$80: for cleaning manure from the yard for 4 hours. The landlord said she has no idea what that is about. She has her geese, chickens and dogs in her own fenced portion and the tenant never cleaned that. She said the claim may be related to the tenant cleaning up after her own dogs which she was required to do per the lease.
5. \$140: for a cord of fruitwood. The landlord said the wood was gifted to her daughter by the head landlord and her daughter gave it to her when she left. The tenant never owned the wood.

The landlord again pointed out she did not receive this evidence but did answer to the best of her ability in the hearing. She said she never denied access to the tenant's trailer but when the head landlord came over, he noted there was no blockage. The head landlord was in the hearing and said there had been problems with the tenant lying continually to them. He lives in another residence.

In evidence is the 10 Day Notice to End Tenancy, the lease agreement, a prospective sub tenant's letter, some letters of the landlord, a 24 hour Notice of Entry so the prospective sub tenant could retrieve her belongings and the tenant's refusal on it in black marker, a letter signed by a co-worker of the landlord dated May 18, 2016 stating he saw the tenant on January 5, 2016 swearing and calling the landlord abusive names, then telling her she had to shovel her driveway now. The landlord notes in the letter that this is embarrassing as she has customers come to buy eggs and she has lost some business due to the tenant's behaviour. Another letter from a resident on the property states the tenant arrived on October 15, 2015 with a loaded car and wanted her to unload it for her and was abusive when the other tenant said she had back problems and could not do that. The other resident also notes the tenant wanted her to do many other jobs for her, including shovel her driveway.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

### **Analysis:**

Although the tenant denies she signed the lease on October 13, 2015 and move in on October 15, 2015, I find the landlord's evidence most credible and prefer it to the

tenant's as the lease in evidence is dated October 13, 2015 and the first paragraph states the tenant agrees to : 1. Pay half a month's rent, the amount of \$250, and due on the move in date, the 15<sup>th</sup> of October 2015. The tenant signed the lease and initialled the first page. Whether the tenant moved in or not on the 15<sup>th</sup>, I find she signed an agreement to pay rent from that date and she never paid the \$250 as she admitted in the hearing. I also find evidence supporting the landlord's evidence that she did move in as another resident of the property wrote of the tenant coming up that date and abusing her for not helping her. I find the tenant owes the \$250 for rent from October 15-31 and also rent for May 2016 which she agreed she has not paid.

Regarding the tenant's claim, I find 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.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

I find insufficient evidence that she served the landlord with the details of her claim contrary to the principles of natural justice which require an applicant to provide details of the claim and give the respondent an opportunity to answer the claim. However, in the interests of preventing a multiplicity of proceedings, I will give her claim limited consideration together with the verbal replies of the landlord in the hearing. I find the onus is on the tenant to prove on the balance of probabilities that the landlord through act or neglect violated the *Act* or tenancy agreement and caused her loss for which she should be compensated.

On her claim for \$40, I find insufficient evidence that the landlord requested the tenant to build a fence or that she had to build it because geese were attacking her. I find the landlord's explanation more credible that she built it because she wanted to keep her puppies in. I find it more probable that the landlord's geese were contained as she sold eggs and her customers required free access just as the tenant did. I dismiss this portion of her claim.

Regarding her claim for \$300 for cleaning snow, I find the lease stated that cleaning snow from her designated yard and parking spots was her responsibility. The landlord denied that she ever cleaned snow from the landlord's area. I find insufficient evidence to satisfy the onus of proof that she did clean the landlord's area. I dismiss this portion of her claim.

Regarding her claim for \$500 for hauling water for 30 days when there was no water, I find insufficient evidence that this was caused by any act or neglect of the landlord. I find the tenant was switching off the water supply herself as a prospective room mate observed this. I dismiss this portion of her claim.

I find insufficient evidence to support her claim that she is entitled to \$80 for cleaning manure from the yard for 4 hours. If it was clean up from her own pets, I find the lease obliges her to do this in clause 7. I dismiss this portion of her claim.

I find insufficient evidence to support her claim that she owned fruitwood and that the landlord took it. I find the evidence of the landlord more credible that the head landlord gifted to her daughter the wood and her daughter gave it to her when she left. The head landlord gave evidence that he had found the tenant lying about numerous items in his interactions with her. I dismiss this portion of her claim.

### **Conclusion:**

The tenant vacated so the landlord no longer requires an Order of Possession. I find the landlord entitled to \$750 in rent arrears and to retain the security and pet damage deposits to offset the amount owing. The calculation for the monetary order is below. I find the landlord entitled to recover the filing fee for this application.

I find the tenant has vacated and removed or belongings so she no longer requires an Order for access. For the reasons stated above, I dismiss the rest of the application of the tenant in its entirety without leave to reapply. No filing fee was paid so none is awarded.

### **Calculation of Monetary Award**

Rent arrears for October 2015 & May 2015	750.00
Filing fee	100.00
Less security and pet damage deposits	-500.00
Total Monetary Order to Landlord	350.00

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: June 16, 2016

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Residential Tenancy Branch