



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TWENTY M HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute codes

OPR CNR MND MNR MNDC FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset of the hearing, the parties confirmed that the tenant vacated the rental unit on May 25, 2016; accordingly the landlord's application for an order of possession and tenants application to cancel the Notice to End Tenancy were withdrawn. The landlord's agent also withdrew the claim for unpaid rent for the month of June 2016 and requested leave to reapply for the claim for damage to the rental unit. The landlord's agent submitted that this claim was made before the tenant had vacated the unit and he did not have sufficient time

to assess the full damages and submit evidence in time for this hearing. The landlord's claim for damage to the rental unit was dismissed with leave to reapply.

### Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

A written tenancy agreement was entered into and signed by the parties on February 7, 2016. A copy of the written agreement was provided on file. The tenancy began on March 1, 2016 with a monthly rent of \$2500.00 payable on the 1<sup>st</sup> day of each month. A security deposit was not collected at the start of the tenancy. The tenancy was for 2 month fixed term expiring on April 30, 2016. When the original agreement was signed, the landlord's agent advised the tenant that the tenancy may be extended for an additional month depending on when the landlord received permits to demolish the rental unit. The landlord's agent had the tenant initial on two versions of page#2 of the tenancy agreement with one stipulating an end date of May 31, 2016. The landlord's agent did not initial the second copy with the May 31st end date and a copy of this version was not provided to the tenant. Both parties initialled the agreement with the April 30, 2016 end date and a copy of this agreement was provided to the tenant. The second version was never signed or initialled by the landlord.

In mid-April the landlord's agent communicated verbally to the tenant that the tenancy would be extended to May 31, 2016. On April 19, 2016, after receiving noise complaints the landlord's agent advised the tenants that the tenancy would not be extended. The tenant and her roommates started the process of moving and searching for alternative accommodations. Then towards the end of April, the owner of the rental unit spoke to the tenant directly and agreed to extend the lease until the end of May 2016 on conditions that there be no more parties, rent for May be paid in full and on time and the tenant and all other occupants vacate on May 31, 2016.

The tenant did not pay rent on May 1, 2016 and on May 2, 2016 the landlord served the tenant a 10-Day Notice to End Tenancy. The tenant acknowledged that the rent for May 2016 has not been paid.

Landlord's claim:

The landlord's claim is for outstanding rent in the amount of \$2500.00 for unpaid rent for the month of May.

The tenant argues that she was not obligated to pay the May rent as she never received a copy of the May lease that the landlord originally agreed to but later stated would not be extended. As she was unsure of whether or not there was a lease for May 2016 she did not pay the rent.

Tenant's claim:

The tenant's claim is for a monetary award in the amount of \$2500.00 as compensation for the emotional stress and damage. The tenant argues the landlord did not provide proper Notice to End the tenancy. The landlord caused confusion by not providing a copy of the lease, which extended the tenancy, and after agreeing to extend the lease, the landlord advised the lease would not be extended and then again later agreed to extend the lease.

The landlord argues there is no merit to the tenant's claim as she was offered an opportunity to stay until May 31<sup>st</sup> and that the Notice to End Tenancy was only served after the tenant failed to pay rent.

### Analysis

Landlord's claim:

Section 26(1) of the Act requires that 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.

The definition of a "tenancy agreement" under the Act includes an oral agreement, express or implied, between a landlord and a tenant respecting possession of a rental unit.

I find the parties verbally entered into an agreement to extend the tenancy until May 31, 2016 as such the tenant was obligated to pay rent for the month of May 2016. The tenant did not have authorization under the Act to deduct all or a portion of this rent. Had the tenant accepted the landlord's verbal notice to not renew the lease and vacated the rental unit on April 30, 2016, the tenant would not have been obligated to pay the rent. But as the tenant did not vacate the rental unit until May 25, 2016, I accept the landlord's claim for outstanding rent of \$2500.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2600.00.

Tenant's claim:

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

I find the tenant has not established that the landlord failed to comply with the Act, the regulations or the tenancy agreement. The landlord ended the tenancy in compliance with the Act by serving a 10 Day Notice to End Tenancy after rent had not been paid as required by the tenancy agreement. The verbal notice given by the landlord to end the tenancy on April 30, 2016 after already agreeing to renew the lease was of no effect. The tenant did not have to take any action upon receiving this verbal notice and could have simply chosen to ignore it or apply for dispute resolution had the landlord applied for an order of possession based on the ending of the fixed term lease. The landlord did not pursue such action but rather agreed to honor the verbal agreement to extend the lease.

The tenant's application is dismissed without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2600.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: June 09, 2016

---

Residential Tenancy Branch