



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, MNDC, CNR, DRI, RR, OLC, FF

### Introduction

In the first application, by file number, the landlord seeks an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent dated November 5, 2016 and pursuant to a mutual agreement to end the tenancy. She also seeks a monetary award for unpaid rent and utilities and for damage to property, cleaning and repair of the premises. She also seeks a monetary award loss of B & B rental income, travel and agent costs.

In the second application the tenants seek to cancel the ten day Notice. They also seek to dispute a utilities cost increase, for a monetary award for their deposit money and compensation because one of the bedrooms did not have an alternate fire exit.

The tenants vacated the premises on November 30, 2016. The question of the enforceability of the ten day Notice is no longer relevant.

Each side attended the hearing and was 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 the landlord is entitled to any of the monetary claims she makes? Are the tenants entitled to compensation because a bedroom had no alternate exit?

### Background and Evidence

The rental unit is a two bedroom suite in a house. It was provide as a furnished suite. The house also contains two other rental units and a bachelor accommodation reserved by the landlord for herself.

There is a written tenancy agreement. The tenancy started December 1, 2015 for a one year term. It provides that the tenancy ends and the tenants must vacate November 30, 2016. The monthly rent was \$1450.00, due on the first of each month in advance.

The landlord holds a \$675.00 security deposit and a \$675.00 pet damage deposit. She also demanded and received a \$200.00 deposit as security to ensure the premises were left clean at the end of the tenancy.

The November rent cheque from the tenants was cancelled and the November rent went unpaid. The tenant Ms. D. says she wanted the landlord to keep the deposit money to be used for the November rent. The landlord did not agree to do so.

The landlord issued a ten day Notice to End Tenancy for the unpaid rent and for \$318.99 for unpaid utilities. The tenants received that Notice on November 5. They made their application to dispute the Notice on or before November 10, within the five day period permitted by s. 46 of the *Residential Tenancy Act* (the "Act").

The landlord was under the impression that the tenancy would end ten days after service of the ten day Notice unless the tenants paid the rent, whether or not the tenants had applied to cancel it. She proceeded to arrange a move out condition inspection for November 15.

The tenants opposed the intrusion caused by the inspection. Police attended.

The landlord also took steps to rent out the rental unit as a Bed and Breakfast accommodation for the last two weeks of November. She testifies that because the tenants would not move out by November 15, she lost \$1875.00 of income for that period.

Another move out condition inspection was arranged for November 30. The tenant Ms. D. attended. She disagreed with the landlord's assessment of the state of the premises. The landlord offered up a paper asking the tenant to acknowledge the state of the

premises but the tenant refused to sign. The paper did not contain a place for the tenant to sign indicating she disagreed with it, as conventional move out reports do.

The landlord claims for unpaid utilities based on a 50% share owed by the tenants. The written tenancy agreement states that the tenants' share of utilities, including cable, is to be 30%.

The landlord says that earlier in the year she determined that the tenants were using too much heat and, as well, should be paying a great proportion because one of the other suites had been vacant and so the tenants were using a percentage of utilities greater than 30%. She gave the tenants 60 days notice of the increase.

The landlord testifies that at the end of the tenancy she found an end table from the rental unit outside, exposed to the elements. Its glass top was missing and the wood was wet and rotting. She refers to an ad for a similar table costing \$349.00.

She claims an NSF charge for the November rent cheque and late fees for the November rent.

The landlord had permitted the tenants to use her post office box. There is no mail delivery to the rental unit. In mid November the landlord had the post office change the lock on the box and retained the key. She seeks the cost for that change.

The landlord spends most of her time some distance away. She says that she had to hire an agent to help deal with matters involving this tenancy in November and seeks recovery of that cost. As well, she seeks ferry and meal costs for trips back and forth.

Though not formally claimed in her application, the landlord also seeks the cost of repairing wall damage, steam cleaning a mattress, cleaning two mattress covers and the cost of general cleaning. She indicated that she would have to pay for junk removal from the yard but had no dollar cost for that service. The wall has not been repaired yet. She also claims the couch was damaged but does not advance a claim in that regard.

The tenant Ms. D. testifies that she thought she could offset the deposit money against the last month's rent.

She denies agreeing to any greater share of utilities. She acknowledges that she owes \$194.14 based on the 30% sharing agreement.

Ms. D. denies that the tenants left the premises less than reasonably clean or that any damage was done. She denies that the mattress or covers were soiled. She disagreed with the landlord's findings at the move out inspection on November 30. She says that the landlord actually used photos take by the tenant Mr. S. in November for use in advertising the rental unit for new tenants.

She says that the couch was in very poor condition from the start and that in April 2016 she asked the landlord to replace it.

She says the landlord informed them November 14 that they could no longer use the post office box. They returned the key to the post office on November 15 and it was place in the box. She feels the tenants should not be responsible for the lock change.

Ms. D. denies using excessive heat and says she did not agree to any increase in the share of utilities.

She considers that the tenants should not bear the cost of the landlord's agent if the landlord choses to live far away.

Ms. D. says that the end table did not fit in the rental unit after the tenants moved in with their things so they moved it to a common area in house. She does not know what became of it after that. She says it was worth perhaps \$20 to \$40.00.

During the tenancy Ms. D. came to the belief that because one of the bedrooms in the rental unit had not window, and thus no "second fire exit" it was illegal and that she should be compensated for it. She says she texted the landlord about it but nothing was done.

In addition, the tenants advance a number of complaints regarding the smoke detector, the fan in one of the two bathrooms and the existence of mould.

The tenant Mr. S. testifies he didn't know what became of the landlord's table.

He feels the landlord cannot unilaterally change the tenancy agreement it raise their share of utility costs.

He strongly asserts that the rental unit could not possibly be used for a bed and breakfast operation. He was asked about the fact that there was a sign outside the rental unit indicating it was a B & B. He responded that he had never read the sign.

## Analysis

### Rent and Fees

As stated at hearing, s. 26 of the *Act* requires that tenants must pay the rent, even if their landlord is in breach of the *Act* or the tenancy agreement. Under s. 38, a tenant may not unilaterally apply deposit money to rent.

The tenants failed to pay November rent. The landlord is entitled to a monetary award of \$1450.00.

The tenancy agreement addendum provides that the tenants must pay a \$35.00 “NSF” fee for any and all returned cheques. That provision is contrary to s. 7(1)(d) of the Residential Tenancy Regulation which allows a landlord to charge “an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.” As a result, the late fee provision in the addendum is invalid and not enforceable.

The landlord seeks to recover \$600.00 in “late fees” pursuant to a provision in the addendum that requires the tenants to pay a \$20.00 per day late payment fee. That provision is also contrary to s. 7(1)(d) of the Regulation and is invalid and not enforceable.

### B & B. Loss

I dismiss the landlord's claim for loss of B & B income. Despite having issued a ten day Notice to End Tenancy on November 5, 2016, once the tenants filed their application to challenge that Notice the tenancy continued past the ten day time limit in the Notice. The landlord was not at liberty to offer possession of the rental unit to anyone for the last two weeks of November.

### End Table

The rental unit came with the end table and the tenants were obliged to return the rental unit to the landlord with the end table, undamaged but for reasonable wear and tear. The fact that they placed the table in a common area did not absolve them of their

responsibility to return it in good order at the end of the tenancy. I consider that the value of a comparable new table is about \$250.00. I reduce that figure to take into account the depreciated value of it and I award the landlord \$125.00.

#### Utilities

The parties to a contract are not entitled to change its terms unless there is a mutual agreement. The landlord had made her bargain with the tenants for 30% of the utilities and she is bound by it.

She has provided a handwritten breakdown of various Hydro and cable charges without providing the actual bills. Such evidence is not sufficient to accurately determine the amounts owing at the proper rate. The tenant Ms. D. admitted to \$194.14 as the proper amount owing and in all the circumstances I award that amount to the landlord.

#### Post Box Key

I dismiss this item of the claim. The landlord may have felt she needed to change the lock on the post box out of sense of security but she has not proved tenant conduct that justifies that concern.

#### Travel and Agent Fees

I dismiss this item of the claim. It is the landlord's business where she wants to conduct her business from and if it is a great distance away from the rental unit she cannot expect her tenants to foot that bill.

Similarly, if the landlord determines it is more convenient to use an agent than to conduct her landlord business directly, her tenants are not responsible for the cost of that decision.

Last, some of the agent's expenses appear to have been incurred in pursuing the landlord's dispute resolution claim. Expenses of this nature, such as the cost to serve documents, cannot be awarded by an arbitrator, whose jurisdiction is limited to awarding recover of the filing fee.

I dismiss these items of the landlord's claim.

#### Cleaning and Repair

I find that the landlord and the tenant Ms. D. attended for the move out inspection on November 30 and that they were unable to agree on the state of the premises. I find that their disagreement would have been recorded on the move out inspection report had that report contained such a provision for the tenant to sign.

In these circumstances, the contents of the move out report are of little if any value to assessing the state of the premises at the end of the tenancy.

It is the landlord's responsibility to prove her claim by providing evidence of the state of the premises. In this case the landlord's assertions about the mattress, the mattress covers, the wall damage, the cleanliness of the rental unit or the grounds are all denied by the tenants. The photographic evidence presented by the landlord is of such poor quality it is of no assistance in choosing the landlord's evidence over that of the tenant.

I find that the landlord has failed to prove entitlement to damages for the mattress cleaning, the mattress covers cleaning, wall repair or yard or general cleaning required to raise the state of the rental unit to a "reasonably clean" state: the level of cleanliness imposed on a tenant by s. 37(2) of the *Act*.

### The Tenants Claim

It is not disputed that one of the bedrooms in the rental unit had no window to the outside. However, the tenants have failed to provide any objective evidence in the nature of a fire code or building code that shows it to be a violation.

Even had that evidence been present, the tenants have not shown they suffered damage as a result. They have not been prevented from using the room by any order of any government authority.

The premises are as they appeared when the tenants decided to rent. There is little evidence to show that the safety of the room was a significant concern during the tenancy and no evidence that the tenants altered their use of the premises because of it.

I dismiss the tenants' claim for a monetary award.

### Conclusion

The landlord is entitled to a monetary award totalling \$1769.14

The tenants are entitled to offset their \$675.00 security deposit, their \$675.00 pet damage deposit and the \$200.00 cleaning deposit against that award.

I grant each side recovery of the \$100.00 filing fee for their applications.

The landlord will have a monetary award against the tenants for the remainder of \$219.14.

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: January 26, 2017

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Residential Tenancy Branch