



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. 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.

At the outset of the hearing I confirmed that the tenant had sent her hearing documents to both named landlords via registered mail. The landlord confirmed that the other named landlord, who was acting as his agent during the tenancy, was aware of the hearing but chose not to participate.

As for the landlord's response and evidence, the landlord testified that he sent a copy to the tenant at the address appearing as her service address on her Application for Dispute Resolution. The tenant pointed out that she had provided a service address and a different mailing address on her Application. The landlord stated that he did not notice the other address.

In completing an Application for Dispute Resolution, the applicant must provide a service address so that the respondent may serve documents and/or evidence in response to the claims against them. On the Application the service address area indicates that this is the address where material may be given personally to the applicant, left for the applicant, faxed or mailed to the applicant. I am satisfied that the landlord used the tenant's service address as it appears on her Application and I have accepted and considered the landlord's documentary evidence. However, in consideration that the tenant stated she had not received the landlord's evidence since it was sent to her service address instead of her mailing address I informed the parties that the landlord would be expected to orally describe his response and evidence during the hearing so that the tenant may respond to it.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord in the amount claimed?

Background and Evidence

The one-year fixed term tenancy started on July 8, 2016 and was set to expire on July 1, 2017 and continue on a month to month basis thereafter. The tenant was required to pay rent of \$2,600.00 on the first day of every month. The tenant paid a security deposit of \$1,300.00. The tenant did not actually pay a pet damage deposit to the landlord; however, the landlord gave the tenant credit of \$650.00 for a pet damage deposit in recognition that the tenant purchased an air conditioning unit for the rental unit and to satisfy her various other complaints with respect to the property.

The parties were in dispute as to the circumstances leading to the end of the tenancy. The tenant alleged that it was the landlord's failure to provide air conditioning and other various repairs at the property and because having two suites in the house was a violation of City by-laws. The landlord alleged that it was animosity between the tenant and other occupants in the house that lead to the other occupants moving out and the tenant needing to end the tenancy. Whatever the reason, it is undisputed that the tenant and the landlord's agent executed a Mutual Agreement to End Tenancy dated October 6, 2016 with an effective date of October 20, 2016. The tenant and landlord's agent also executed another document on October 6, 2016 with respect to paying rent for October 2016 (the payment agreement). Below, I have reproduced the payment agreement:

This is an agreement to have \$1,950 of damage deposit plus additional \$650 (paid by [tenant's name] prior to move out date) be used for October 2016 rent total \$2,600, only on the basis there is no damage or repairs needed at end of tenancy.

If there is damage or repairs needed we will take trailer or 2012 Dodge van [serial numbers provided] until \$1,950 damage deposit is paid.

All receipts/side deals made from beginning of tenancy are null and void. Receipts were provided by tenant for prev. negotiations which are null and void.

\$50 taken off for wire closet in bedroom. \$600 sent by e-transfer.

On October 20, 2016 the tenant and landlord's agent performed the move-out inspection and the tenant gave the landlord's agent a written request for reimbursement of rent for the 11 day period of October 20, 2016 through October 31, 2016. The landlord's agent refused to reimburse the tenant. The tenant subsequently filed this Application seeking a Monetary Order for \$922.58 representing recovery of rent for the last 11 days in October 2016.

The tenant submitted that the payment agreement was made the day before signing the Mutual Agreement and that when the payment agreement was made the tenant was to have occupancy until October 31, 2016. However, the landlord's agent produced the Mutual Agreement for the tenant's signature the following day and it provides for an earlier end date of October 20, 2016. The tenant submitted that she felt she had no choice but to sign the Mutual Agreement as the landlord's agent stated that if she did not sign it she would not be released from the fixed term tenancy agreement and the other occupants had already moved out or where about to. The tenant submitted that the landlord's agent deprived her of use of the rental unit for the last 11 days of October 2016 so she should not have to pay rent for those days.

The landlord responded by stating it was the tenant who had advised him that she could be moved out on or about October 20, 2016 and the tenant was willing to sign the Mutual Agreement reflecting that. The landlord did not have an objection to the tenant staying until October 31, 2016 but was agreeable to ending the tenancy earlier as there was no discussion about refunding a portion of the October 2016 rent. The landlord acknowledged that the Mutual Agreement may have been signed the day after the payment agreement was signed.

In addition to the payment agreement and the Mutual Agreement and request for reimbursement, the tenant provided copies of letters addressed to the landlord by the City on October 12, 2016, whereby the City informs the landlord that a complaint had been received that there is an illegal secondary suite at the property and to take one of three options to rectify the violation within 15 business days of receiving the letter.

The landlord provided copies of text messages received from the tenant on October 5, 2016 including one received at 19:15 that states:

I hope that's okay and then il ask to borrow from grandparents am im a little short on the difference and will get that \$650 together to have for tomorrow night to cover till end of month? But we would be out way before then so would offer the possibility if you had a tenant wanting to move in sooner, even after the 20<sup>th</sup> or so

they could possibly? Is that what the mutual agreement would accept/list (amounts n difference paid?) let me know thank you.

The landlord or landlord's agent responds at 21:28 via text message. The photocopy of the text is partially cut-off but I have reproduced the words I can make out below:

A mutual agreement would just state the day... all agree on for you to move out. We are ... negotiate terms that work for both parties.... As well any terms we negotiate and agree on we can discuss tomorrow we can put in wr... there aren't any surprises later. It may be be...for you to have the \$650. Hope that works for you.

### Analysis

Section 44(1)(c) of the Act contemplates and permits a landlord and a tenant to bring a tenancy to an end by way of a written mutual agreement. The landlord's agent and tenant duly executed a written agreement to end the tenancy effective October 20, 2016. Accordingly, I find the tenancy ended as of October 20, 2016 and it is undisputed that the tenant paid, or otherwise compensated the landlord for the entire month of October 2016. The issue to resolve is whether the tenant is entitled to compensation equivalent to 11 days in October 2016.

In addition to the Mutual Agreement executed by the parties, a payment agreement was executed by the parties on the same day or the day prior to the Mutual Agreement.

Where an agreement is clearly written and does not otherwise violate the law, it is to be interpreted and enforced as it is written. The Mutual Agreement contains no provision that the tenant was to be refunded or reimbursed any rent or otherwise compensated for agreeing to end the tenancy early. Similarly, the Mutual Agreement contains no provision for compensation to the landlord despite agreeing to end the tenancy early.

I find the text message from the tenant on October 5, 2016 supports the landlord's submission that it was the tenant that had proposed an end date of October 20, 2016. She proposed this date prior to the executing the payment agreement yet there is no mention of a refund or reimbursement of rent for moving out before the end of the month. Further, as seen in the landlord's text message to the tenant on October 5, 2016 the parties anticipated that the negotiated agreement set to take place on October 6, 2015 would be reduced to writing "to avoid any surprises later". Accordingly, I am of the view that the payment agreement and the Mutual Agreement captures the parties' complete agreement with respect to ending the tenancy early and the tenant's obligation

to pay rent for the month of October 2016. I am also of the view that the tenant's subsequent attempts to seek reimbursement of rent for 11 days amounts to buyer's remorse or as the landlord described it "surprises" after the fact.

As for the tenant's evidence that the property had an illegal suite, I note that the landlord did not receive the City's letter until well after the Mutual Agreement and payment agreement were executed and have no bearing on enforcement of the Mutual Agreement and payment agreement.

In light of the above, I uphold the Mutual Agreement and payment agreement as they are written and I deny the tenant's request to alter those agreements. Therefore, the tenant's application must be dismissed.

### Conclusion

The tenant's application has been dismissed.

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 02, 2017

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Residential Tenancy Branch