



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, LRE, MNDC, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The original hearing was adjourned due to time constraints and the matter was completed at the reconvened hearing.

The Tenant applied on February 23, 2018, with an amendment made April 20, 2017, for:

1. An Order for the Landlord to comply with the Act or tenancy agreement - Section 62;
2. An Order suspending or setting conditions on the Landlord's right to enter the rental unit - Section 70;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 26, 2018, with an amendment made March 29, 2018 to remove one of the originally named Respondents, for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Landlord confirms that his name as set out in his application is his correct full name.

Although the Tenant was not aware of the Landlord's full name, the Tenant agrees that the style

of cause should reflect the Landlord's name as provided in full by the Landlord. The style of cause is therefore set out with the Landlord's name as provided and confirmed by the Landlord.

The Landlord's amendment sought to remove a Respondent from its application. The Tenant has no objection to this removal. As a result I allow the amendment to leave only Tenant CT as the Respondent to the Landlord's application.

The Landlord states that the Tenant's evidence was received late by the Landlord. The Landlord confirms that it has reviewed this evidence and does not seek an adjournment to further review and respond to the Tenant's evidence.

The Parties confirm that the tenancy has ended. As the Tenant's claims in relation to the Landlord's compliance and a restriction on the Landlord's access to the rental unit are relevant only to an ongoing tenancy I dismiss these claims of the Tenant. The only claims of the Tenant remaining are the claims for compensation and recovery of the filing fee.

#### Issues

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

#### Background and Evidence

The following are agreed facts: The tenancy originally started on May 1, 2016 for a fixed term to end April 30, 2017. At the outset of this tenancy the Landlord collected \$900.00 as security deposit and \$900.00 as a pet deposit. A second tenancy agreement started May 1, 2017 for a fixed term to end April 30, 2018. At the end of the fixed term the tenancy agreement provides that the Parties may enter into a new agreement and that if another agreement is not made the tenancy continues on a month to month basis on the same terms. The original security and pet deposit was carried over to the next tenancy. Rent of \$1,800.00 was payable on the first day of each month. On February 26, 2018 the Tenant gave notice to end the tenancy for March 31, 2018. The Tenant stopped the rental payment for March 2018. On March 9, 2017 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Notice sets out unpaid rent of \$1,800.00 and an effective move-out date of March 19, 2018. The Tenant moved out of the unit on that date and the Parties mutually conducted a move-out

inspection on the same date, March 19, 2018. The Tenant provided a forwarding address on the move-out inspection report. No rent was paid for March 2018.

The Landlord states that the Tenant was responsible for the rent to the end of the fixed term and claims \$3,600.00 for rent for March and April 2018. The Landlord states that the unit was listed for sale at the end of February 2018 and continued for sale after the Tenant moved out of the unit. The Landlord states that sometime near the end of March 2018 the unit was advertised for rent on line for both \$1,800.00 and \$2,000.00 per month. The Landlord states that the unit was rented in May or June 2018 for \$2,000.00 in monthly rent. The Tenant states that on February 8, 2018 the Landlord sent the Tenant a letter giving the Tenant notice to move out of the unit at the end of the fixed term of April 30, 2018. The Tenant states that although the Tenant was aware that the Landlord's letter did not conform to the Act the Tenant panicked due to having a pet and immediately found another rental unit. On February 14, 2018 the Tenant signed a lease for this other rental unit with a tenancy start date of March 15, 2018. The Tenant states that on February 15, 2018 she received a letter from the Landlord retracting the Landlord's letter ending the tenancy. The Tenant states that upon receiving this letter the Tenant attempted to negotiate the rent for March 2018, the Landlord's request to schedule open houses in March 2018 for the planned sale of the unit and the return of the security and pet deposit. The Tenant states that as the Landlord did not respond and as the Tenant felt that the Landlord was required to pay the Tenant the equivalent of one month's rent for having ended the tenancy for landlord's use, the Tenant stopped the rent payment for March 2018 and then moved out of the unit in compliance with the effective date of the Landlord's Notice. The Landlord does not dispute that the Tenant moved out of the unit on the effective date set out on the Notice.

The Landlord states that the addendum to the tenancy agreement provides for a late rent fee of \$25.00. The Landlord states that the Tenant stopped payment of the March 2018 rent cheque. The Landlord claims a late fee of \$25.00 and an administrative or bank fee of \$5.00. The Tenant does not dispute the late fee or that the rent cheque was stopped. The Tenant states that the Landlord was informed on February 26, 2018 of the stop payment in the Tenant's notice of her intent to vacate the unit for April 1, 2018. The Landlord agrees that they were informed of the stop payment.

The Landlord states that the Tenant was required to pay for her own hydro and gas costs to the end of the fixed term. The Landlord states that the Tenant discontinued these services effective

March 19, 2018. The Landlord states that the hydro thereafter was placed in the Landlord's name in order to keep the unit lit at night for safety measures. The Landlord states that the gas was not reconnected by the Landlord until sometime in April 2018. The Landlord claims \$200.00 as the estimated cost of hydro and \$200.00 as the estimated cost of gas for the period March 19 to April 30, 2018. The Landlord does not have any bills for this period. The Tenant argues that she is not responsible for utilities after the tenancy ended on March 19, 2018. The Tenant argues that the Landlord's estimates for the utility costs are also grossly exaggerated. The Tenant states that the previous hydro bill was \$61.65 and that the previous gas bill was \$73.49. The Tenant provides these bills as evidence of the exaggerated costs being claimed by the Landlord.

The Landlord states that the Tenant changed the locks during the tenancy, did not allow the Landlord to attend the unit, created a face to face disturbance with the Landlord, was hostile, aggressive and made unreasonable accusations and allegations during the last half year of the tenancy. The Landlord states that each time they attended the unit the Tenant would complain that the Landlord was harassing the Tenant, would yell at the Landlord at unannounced visits and threatened to call the police. The Landlord confirms that the Tenant never asked the Landlord to leave when they came to the unit but that the Landlord felt that they had to stay away. The Landlord claims \$2,500.00 for aggravated damages. It is noted that the Landlord's application sets out no detail for the aggravated damages. The Landlord states that he set out the detail for this claim in its evidence package. It is noted that the evidence package was provided to the RTB 14 days in advance of the hearing.

The Tenant states that she never stopped the Landlord from exercising their rights. The Tenant states that the unit had three different entrances and that one of the locks to the unit was difficult to use so the Tenant change it. The Tenant states that she returned the original lock at the end of the tenancy and that this lock change did not ever stop the Landlord from being able to access the unit though the other entrances. The Tenant submits that the Landlords frequently appeared at the unit without notice or with only a text. The Tenant states that at one point she was without water for two days due to a water main break and that the Landlords failed to respond or attend the unit about this problem. The Tenant states that she had to call the city to shut off the water main as the water was pouring out. The Tenant states that when the Landlord finally attended the unit they showed up without notice and yelled at the city workers and the

neighbour. The Tenant states that the Landlord continually pushed the envelope and that it got so bad at the end that the Tenant had to call the police on one occasion.

The Landlord states that they incurred postage and other costs for serving the dispute documents for the hearing and for preparing and serving evidence. The Landlord claims \$59.50 for these costs.

The Parties agree that the Tenant provided her forwarding address on the move-out condition report completed on March 19, 2018. The Tenant states that the Landlord has not returned her security deposit in full and the Tenant claims return of double the combined security and pet deposit in the amount of \$3,600.00 ( $\$900.00 + 900.00 \times 2$ ).

The Tenant states that as she was evicted she had no time to clean the unit and had to hire a company to clean the unit at move-out. The Tenant claims these costs of \$233.10.

The Tenant argues that since the Landlord gave the Tenant the letter that they would not be continuing with the tenancy as they were selling the house the Tenant is entitled to compensation for the Landlord ending the tenancy for landlord's use. The Tenant agrees that the Landlord told the Tenant that the proper documents would be provided to the Tenant at some point but the Tenant panicked knowing that rentals were limited, and in particular rentals allowing pets were even more limited, so the Tenant went ahead and made plans to leave. The Tenant claims compensation equivalent to a month's rent of \$1,800.00. The Landlord states that the first letter was given more than two months prior to the end of the tenancy and that the Landlord subsequently spoke with the RTB and learned that he needed to end the tenancy with an approved form. The Landlord states that he then sent the Tenant a letter retracting the first letter and apologizing for the mistake. The Landlord states that the Tenant sent a text telling him that the apology was not accepted. The Landlord states that the Tenant knew that the first letter could not legally end the tenancy.

The Tenant states that her peaceful enjoyment of the unit was disrupted by the Landlords in February 2018 when the Landlord were trying to evict the Tenant, by the Landlord's not believing the Tenant that they could not evict the Tenant in the manner being attempted, for not communicating with the Tenant and for attempting to have an open house while the Tenant was

not medically able to accommodate such an event. The Tenant provides a medical note indicating that she was not medically able to accommodate the open house. The Tenant states that the Landlord finally agreed to accommodate the Tenant and the open house did not occur. In addition the Tenant states that she lost peaceful enjoyment due to the Landlords constantly showing up at the unit, walking and driving past the unit. The Tenant was also concerned that the Landlords would let her dog out of the yard and as a result the Tenant set up cameras. The Tenant states that her neighbours informed her of the Landlord entering the yard. The Tenant did not provide any witness letters from the neighbours. The Tenant states that the Landlord's photos of the yard also prove that they were in the yard without the Tenant's knowledge or consent as she had never allowed the Landlord to take the photos. The Tenant states that her blood pressure was high as a result of the Landlord's constant presence. The Tenant states that she is unsure of how many times the Landlords were present at the unit during February 2018 but that they were there at least 5 times. The Tenant claims compensation of \$1,800.00.

The Landlord states that they only went to the unit once without notice and were given permission to enter the unit. The Landlord states that they otherwise only attended the unit to post notices of entry. The Landlord states that they only drove by 2 or 3 times in order to ensure that the sale sign was still upright. The Landlord states that the sign had been previously found uprooted shortly after it was placed and they suspect that the Tenant did this.

The Tenant states that she incurred moving costs due to the Landlord's eviction. The Tenant states that the Landlord had been informed that March 2018 rent was stopped by the Tenant. The Tenant states that she had to pay rent at two different places in order to secure her next rental. The Tenant states that even though she tried to give the Landlord advice about how to end the tenancy the Landlord was hostile and was even trying to charge the Tenant with extra fees. The Tenant states that had she stayed at the unit pending receipt of the correct notice to end tenancy she would have ended up in the hospital. The Tenant states that she had a stressful job, was going through family stress and as the Landlord had made the relationship so hostile, she had no safe place to be and she felt that she had no choice but to move out. The Tenant claims moving costs of \$1,000.00. The Landlord states that they cannot be held responsible for any of the Tenant's moving costs as they only ended the tenancy for unpaid rent and that they did not breach the Act by ending the tenancy in this manner. The Landlord states that if they did something wrong in trying to end the tenancy with the first letter they did correct

this as soon as possible. The Landlord states that the Tenant also refused to return their calls and that the Landlords suffered stress for two weeks as well.

The Tenant states that she lost her job on March 29, 2018 because she was not able to work week-ends due to having to pack and move out of the unit and because she had to take time off for stress. The Tenant claims \$5,400.00 as lost income for the period March 29 to April 16, 2018 and \$1,400.00 for loss of work on two Saturdays for packing and moving. The Landlord states that they made a mistake by sending the original letter ending the tenancy and they very quickly sent a letter of apology when they determined this was a mistake. The Landlord states that they did nothing to cause the Tenant any loss of wages or the loss of her job.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is payable until a tenancy ends. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

As the Tenant moved out on March 19, 2018 I find that rent was payable until that date. I also note that the tenancy ultimately ended in compliance with the Landlord's notice to end tenancy for unpaid rent. Given that no rent was paid for March 2018, and based on the undisputed evidence of the amount of monthly rent payable, I find that the Landlord is entitled to unpaid rent of **\$1,045.08** ( $1,800.00/31 = 58.06$ ;  $58.06 \times 18 = 1,045.08$ ). As the Landlord knew in February 2018 that the Tenant intended to move out at the end of March 2018, the Landlord had from this point to take reasonable steps to mitigate any lost rental income for April 2018. As the Landlord had the unit for sale in February 2018 and as the Landlord, while the unit was still for sale, advertised the unit for rent at \$2,000.00 in late March 2018 I find on a balance of probabilities that the Landlord's actions significantly contributed to the unit not being rented for April 2018. Further and based on the same facts, I find that the Landlord failed to take steps to meet its

obligation to mitigate the claimed losses. For these reasons I dismiss the claim for lost rental income.

Given the Tenant's agreement that she owes a late rent fee I find that Landlord has substantiated the claim for **\$25.00**. Based on the undisputed fact that the Landlord knew the cheque for March 2018 had been stopped, I find that the Landlord caused the administrative fee by its own actions in depositing that cheque and that the Tenant is therefore not responsible for the administrative fee. I dismiss this claim.

As the utilities were connected by the Landlord after the tenancy ended and for the Landlord's benefit and as the Landlord does not have any evidence of the actual costs, I find that the Landlord has not substantiated that the Tenant caused the utility costs claimed and I dismiss this claim.

While the Landlord's evidence of the Tenant's behavior towards the Landlords may have significantly disturbed the Landlord, the Act provides the landlord with the remedy of ending the tenancy for cause. The Landlord did not serve the Tenant with any notice to end tenancy for cause and the Tenant did not breach any notice to end tenancy for cause from the Landlord. For these reasons I find that the Landlord is not entitled to damages as a result of the Tenant's behavior towards the Landlords and I dismiss the claim for aggravated damages.

As nothing in the Act provides for recovery of costs to participate in the dispute resolution process beyond the filing fee I dismiss the Landlord's claim for \$59.50.

As the Landlord's application met with limited success and as I consider that the ultimate start of this dispute was due to the Landlord's initial act to end the tenancy contrary to the Act I decline to award the Landlord with recovery of the filing fee leaving the Landlord with a total entitlement of **\$1,070.08**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the



tenant double the amount of the security deposit. Based on the undisputed evidence of the provision of the forwarding address on March 19, 2018 and considering that the Landlord made its application for dispute resolution claiming against the security deposit on March 26, 2018 I find that the Tenant has not substantiated its claim to return of double the pet and security deposit. As the Landlord has an entitlement of \$1,070.08 I order the Landlord to retain this portion from the Tenant's combined pet and security deposit plus zero interest of **\$1,800.00**, leaving a remaining amount of **\$729.02** to be returned to the Tenant forthwith.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy, when given by a landlord, must be in the approved form. Given the evidence of both Parties in relation to knowing that the Landlord could not end the tenancy with the first letter, I find on a balance of probabilities that the Tenant was aware that the Landlord had to serve a notice on an approved form in order for the Tenant to be properly evicted. As the Tenant did not receive any notice to end tenancy for landlord's use on an approved form, I find that the Tenant is not entitled to the equivalent of one month's rent in compensation and I dismiss this claim.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As it is the Tenant's obligation to leave a unit reasonably clean at the end of the tenancy and as the Landlord did not breach the Act by ending the tenancy for unpaid rent, I find that the Tenant has not substantiated that the Landlord breached the Act thereby causing the cleaning costs. I dismiss the Tenant's claim for \$233.10.

Given the evidence that the Tenant knew and informed the Landlord of its incorrect approach to ending the tenancy, given the Landlord's evidence of an apology letter within a short time of the eviction letter, and as a landlord may end a tenancy under the Act, I find that the Tenant has not substantiated that the Landlord breached the Tenant's right to enjoyment of the unit by seeking

to end the tenancy in the manner initially taken by the Landlord. I do not consider a lack of communication from a landlord to be a breach of the Tenant's right of quiet enjoyment. As the open house did not occur I find that the Tenant has not substantiated that the Landlord caused the Tenant any disturbance contrary to the Tenant's medical requirements. Although the Landlord gives plausible evidence that they were only at the unit or driving by a few times, I note that the Landlord's own evidence is that the Tenant would yell at them for unannounced visits. Given this evidence and considering the Tenant's own compelling description of the Landlord's behavior, I find on a balance of probabilities that the Tenant has substantiated that the Landlord disturbed her peace by being at the unit or driving by the unit on at least 5 occasions. As this is the only basis for the Tenant's claim for compensation and as the Tenant otherwise had full use of the unit I find that the Tenant has only substantiated a nominal amount of **\$100.00** for the Landlord's unannounced presences.

Based on the undisputed evidence that the Tenant failed to pay rent for March 2018 I find that the Landlord did not breach the Act by ending the tenancy for unpaid rent and that the Tenant by her own actions caused the end of the tenancy. The Tenant made a choice to move despite knowing that the Landlord could not end the tenancy as was initially attempted. The Tenant is therefore not entitled to moving costs and I dismiss this claim.

The Tenant provided no supporting medical documentation that any illness caused the Tenant to lose her job. The Tenant has not provided any evidence of any breach by the Landlord that caused the Tenant to either lose her job or to take work off for packing for the move. I do not consider the Landlord's appearance at the unit on 5 occasions to reasonably cause an amount of stress that would also cause a loss of employment. As a result I dismiss the Tenant's claim for lost income and work.

As the Tenant's application has met with only a nominal amount, I decline to award the Tenant with recovery of the filing fee leaving the Tenant with the total entitlement of **\$829.92**.

### Conclusion

I Order the Landlord to retain \$1,070.08 from the security deposit plus interest of \$1,800.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$829.92**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This matter is adjourned. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 27, 2018

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Residential Tenancy Branch