



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, MNDC, FF

### Introduction

The tenant applies for an order that the landlord complies with the law or the tenancy agreement. She also seeks a monetary award for her \$490.00 security deposit, a half month's rent because she feels she was forced out of her accommodation, \$1000.00 for stress as well as rent for the remainder of her fixed term tenancy in the amount of \$4900.00.

The landlord has filed material in response to the tenant's claim and has included her own monetary order worksheet seeking 20 days loss of rental income, key and fob replacement costs, advertising costs and \$1000.00 for stress.

The landlord has not brought her own application against the tenant as required by the *Residential Tenancy Act* (the "Act") however at hearing the tenant consented to have the landlord's claim heard.

Both parties attended the hearing and were 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

Was the tenant entitled to vacate the rental unit and end the tenancy? If so, what of her monetary claim should be allowed? What of the landlord's claim should be allowed?

### Background and Evidence

The rental unit is the den in a bedroom “plus den” apartment. The tenancy started September 1, 2019. At that time the landlord had already rented the bedroom to a man named J. The tenant and J. were to share cooking and bathroom facilities.

The tenant’s rent was \$980.00 per month due on the first of each month. The parties signed a written tenancy agreement. It shows that the term of the tenancy was to April 30, 2020. The tenant is a college student.

J. vacated the bedroom about September 11 and a new tenant, a man named M. moved in. M. still lives in the apartment.

In the apartment there was a third room the tenant describes as a bedroom and the landlord describes as a windowless storage room. It has a lock on its door. During this tenancy the landlord reserved that room to herself though the tenant says the landlord was never at the apartment and indeed she has never met the landlord.

The tenant testifies that M. immediately proved to be an irritant. Though she says he was a law student, she says he consistently arrived home between the hours of midnight and 4:00 a.m. She says he was loud and he smoked in his room and on the balcony. He brought women home with him who would use the bathroom and use and take toiletries that belonged to her.

The tenant produced various texts between M and her and says she tried to talk to him about his behaviour but he was hostile.

On November 7 the tenant called the landlord to complain about M. It would appear that as a result of that conversation the landlord spoke to M. who basically denied the tenant’s claims or offered explanations. For example: he told the landlord that he did not smoke but that a friend of his would smoke on the balcony during visits and that the smoke smell mostly comes from the neighbour smoking on the neighbour’s balcony and wafting into this rental unit. M expressed his view to the landlord that it was the tenant who was the problem.

The landlord testifies that after talking to M she felt “in the middle” and didn’t know what to do.

On November 11 the landlord contacted the tenant about the idea of the tenant subletting her room for the remainder of the fixed term.

On November 12 the tenant contacted the police about M. She testifies that the police immediately recognized M. even though she'd only spoken his first name. According to the tenant they told her M was a person known to the police and that he was dangerous. They told her she should move out immediately. She testifies that she then arranged for eight of her friends to come help her move out and she "couch surfed" for a month afterward.

On November 13 the tenant sent the landlord a registered letter indicating M was abusive, intimidating and manipulative, that the landlord was responsible to resolve disputes between tenants and the landlord had not taken any action. The letter indicates the tenant was fearful of violence. It does not mention the tenant's conversation with the police. The tenant indicates she is moving all her belongings out and cannot stay. She proposes the landlord cancel the fixed term tenancy agreement.

At hearing the tenant testified about contacting the landlord to permit her to sublet the room to some new tenant she could find. She says the landlord never responded. The tenant located a man, J., interested in subletting, then they found out the landlord was advertising the room (plus the storage room) for rent and J. went directly to the landlord. He was prepared to move in December 15 but he did not rent the accommodation. The landlord rented to another, starting December 20.

### Analysis

#### LANDLORD'S DUTY

Section 28 of the *Act* obliges a landlord to protect a tenant's right to quiet enjoyment including freedom from unreasonable disturbance. A landlord presented with a complaint by one of her tenants against another is responsible for taking steps reasonable in the circumstances to investigate the complaint and to take those steps reasonably necessary to prevent any unreasonable disturbance from continuing. In differing circumstances a landlord's investigation might lead to the reasonable conclusion that no steps are called for, or, at the other end of the spectrum, that a tenant must be evicted for unreasonably disturbing another tenant.

Nowhere in the *Act* or the standard tenancy agreement is a landlord made responsible for mediating disputes between tenants.

The tenant's chief complaint is about the conduct of M. towards her ever since he moved in. Her evidence shows that it was M.'s conduct that ultimately led her to leave.

I have read the text exchanges between the tenant and M. and I conclude that the landlord had every reason to be troubled by the contrast between their stories. M.'s written words in the texts give the impression of a relatively objective, thoughtful person interested in working a way to get along together in the apartment. Similarly, the tenant's testimony at this hearing was straightforward and believable.

I conclude the landlord cannot be faulted for failing to take extreme action, or any action, against M during that brief period between the tenant's November 7 letter and the tenant leaving on November 13.

## TENANT'S CLAIM

### Security Deposit

I find the tenancy ended, at the latest, on December 20, when the landlord re-rented the room. The tenant has provide the landlord with a forwarding address in writing by serving the landlord with this application, which gives the tenant's address for delivery of material.

Section 38 of the *Act* provides that once a tenancy has ended and once the tenant has provided the landlord with a forwarding address in writing, the landlord has fifteen days to either repay the deposit money or to make an application for dispute resolution.

The landlord has done neither in this case. Section 38 states that a landlord who fails to either repay the deposit money or make an application within the 15 day period must account to her tenant for double the deposit amount.

The tenant has not requested the doubling penalty in her application. Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" provides that even where a tenant has not requested the doubling, an arbitrator is to award it if s. 38 has been breached, unless the tenant refuses it at hearing. The question was put the tenant at this hearing and she declined to refuse the doubling.

The landlord notes that she was unaware of s. 38 and its effect. Ignorance of the law is not a defence.

The tenant is entitled to \$980.00, being double the security deposit.

#### Half of November's Rent

I dismiss this item. I have found that the landlord acted reasonably in not taking immediate steps against M. The tenant's decision to move was not as a result of anything the landlord should have or should not have done. As between the landlord and the tenant, the tenant leaving it was a breach of the fixed term tenancy agreement. The tenant is not entitled to recover rent back.

#### Compensation for Stress

For the reasons noted above, the tenant's stress would appear to have been caused by her interactions with M. The landlord is not responsible for that.

#### Rent from December to April

The tenant did not pay this rent. There is no ground for this claim.

#### LANDLORD'S CLAIM

##### Rent for 20 days in December

I allow this item and award the landlord \$600.65 as claimed. The tenant breached the fixed term tenancy by vacating the rental unit and not paying the December rent. The landlord was not able to find a new tenant until December 20 and thus lost 20 days rent because of the tenant's breach.

At hearing the tenant advanced the proposition that the landlord had wrongfully refused her attempt to sublet her room. I find no evidence of that. The tenant admitted that at no time did she present the name of a prospective sub tenant to the landlord for approval.

In any event s. 34 of the *Act* provides that a tenant must not assign or sublet a tenancy without landlord consent and if a fixed term tenancy agreement has six months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection. If there is no fixed term tenancy agreement or if a fixed term tenancy agreement has less than six months remaining, a landlord may unreasonably withhold consent.

In the month of November 2019, when the subject of subletting first came up, there were less than six months remaining in the fixed term tenancy. The landlord was not required to consider a request to sublet the tenancy.

#### FOB and Key Costs

I accept the landlord's evidence that the tenant left without returning the fob or key and that the landlord spent \$74.80 to replace them. I award the landlord \$74.80.

#### Ad Costs

The landlord spent \$28.34 for advertising for new tenants after the tenant breached her fixed term tenancy agreement. I allow this item.

#### Stress

There was little evidence from the landlord about this item of the claim. In my view, the landlord having to deal with an interpersonal dispute between two strangers she has placed in a one bedroom "plus den" apartment is a part of her job as a landlord. I dismiss this item of the claim.

#### Cleaning

During the hearing the landlord raised a claim for cleaning. It was not included in the monetary order worksheet she filed and so I dismiss it.

Conclusion

The tenant is entitled to an award of \$980.00. The landlord is entitled to an award of \$703.79. The tenant paid a \$100.00 filing fee for her application, the landlord paid none. As success has been divided, I award the tenant recovery of one half the fee: \$50.00.

The tenant will have a monetary order against the landlord for the difference of \$326.21.

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 30, 2020

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Residential Tenancy Branch