



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRT, MNDCT, RR, RP, FFT**

Introduction

This hearing was scheduled to deal with a tenant's application for repair orders; authorization to reduce rent payable; monetary compensation for emergency repair costs and other damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

The tenant named a property management company as the landlord in filing her Application for Dispute Resolution. Individuals purporting to be the owners of the property appeared for the hearing, along with legal counsel, and stated the property management company named by the tenant is not managing the property. The owner's lawyer requested the style of cause be amended to reflect the owners of the property. The tenant consented to the request. Accordingly, I amended the style of cause to reflect the owners of the property as being the landlords using their legal names, as they provided me during the hearing.

Both parties submitted they had reached a settlement agreement and they seek that I make their agreement binding and provide the orders to give effect to the terms of settlement. The landlord's lawyer had provided a copy of a settlement agreement for my review and I read it aloud. The parties confirmed that the settlement agreement I read aloud is the agreement they reached. During the hearing, I noted a vagueness in term 5 of the settlement agreement. Both parties were in agreement to amend term 5 to insert "14 days". By way of this decision, I have recorded the parties' settlement

agreement, as amended, and I provide the parties with the orders they requested, with the consent of the other party.

Issue(s) to be Decided

What are the terms of settlement?

Background and Evidence

The parties entered into a settlement agreement dated September 29, 2020 that I record below, along with the amendment of term 5 agreed upon during the hearing:

1. Your tenancy at Rental Property will end no later than on **January 31, 2021 at 1pm** at which point in time you and any other occupants will provide vacant possession of the Rental Property to our clients and surrender all keys and any other means of access in your possession.
2. Our clients will waive, as part of your monetary compensation for “prepayment” of rent related to the loss of use of the basement, the requirement of payment of rent for the months of October, November and December 2020 as well as the payment of rent for January 2021.
3. Both the landlords and the tenant agree this settlement is a full and final settlement of all monetary claims that each party may have up to the date of this agreement including any claim the landlord may have for unpaid rent for the month of September 2020. The landlords abandon any claim for unpaid rent against the tenant.
4. Upon your agreement to these terms of settlement, our clients will issue you the remainder of the monetary compensation in the amount of **\$3915** by e-transfer to your email address: [email address omitted here for privacy reasons but is recorded on cover page of this decision]. Please note that our clients’ bank has a limit on the daily amount of e-transfers and the e-transfer will have to be made in two (2) daily instalments instead of one. However, in any event, you will be in receipt of the full above-noted funds by no later than the end of the day on October 1, 2020.
5. You may vacate the Rental Property earlier by giving 14 days prior written notice to our clients or to our firm:
 - a. If you vacate by December 31, 2020, our clients will increase your total monetary compensation to **\$6700**. The difference will be e-transferred to you upon vacating.

- b. If you vacate even earlier, by November 30, 2020, our clients will increase your total monetary compensation to **\$9500**. The difference will be e-transferred to you upon vacating.
6. You agree to make no further or future claim against our clients in respect to the any of the issues raised in your application including but not limited to a loss of quiet enjoyment of the Rental Property and a loss of use of the basement. The terms of this settlement agreement will act as a release on your part and a defence of our clients, the landlords, against any such future claim by you.
7. This settlement does not affect your right to the return of your security deposit or your obligation to leave the Rental Property reasonably clean and undamaged except for reasonable wear and tear, as required by the *Residential Tenancy Act*. This settlement does not affect the landlord's right to make a claim against the security deposit if the Rental Property is damaged or left unclean.
8. Both parties (or their representatives) will attend the RTB hearing on October 15, 2020 to bring the existence of this settlement agreement to the RTB's attention and to seek an Order of Possession for the landlord and a Monetary Order for the tenant consistent with the terms of this settlement agreement.

In the agreement recorded above, "you" or "your" refers to the tenant and "our clients" and "landlord" refers to the property owners.

The landlords requested an Order of Possession effective on January 31, 2021 at 1:00 p.m. in keeping with term 1 of the settlement agreement. The tenant had no objection.

Term 5 was amended during the hearing to add "14 days" with consent of all parties.

During the hearing, the parties were in agreement that term 4 has already been fully satisfied by way of payment to the tenant and the tenant does not require a Monetary Order for this sum. The tenant requested Monetary Orders consistent with term 5 a. and b. even though they would be conditional orders at this point in time. The landlords did not object to providing the tenant with conditional monetary orders so long as the orders referenced term 5 of the settlement agreement. The parties were in agreement that the Monetary Order consistent with term 5. a. would reflect the net amount of \$2785 and the Monetary Order consistent with term 5. b. would reflect the net amount of \$5585.

Disposition of the security deposit was also discussed during the hearing. The parties were in agreement that the security deposit remains in trust for the tenant at this point, to be administered in accordance with the Act at the end of the tenancy. The parties understood that should they have a dispute concerning disposition of the security

deposit at the end of the tenancy, the parties are at liberty to file an Application for Dispute Resolution to seek the remedy available to them under the Act.

Also, the tenant stated she did not have a service address for the owners. As such, the tenant may surrender the keys for the rental unit and given any written notice to be provided to the landlords by delivering them to the landlord's lawyer's office unless the landlords deliver to the tenant a written document providing her with their service address.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record a settlement agreement in the form of a decision or order.

I have accepted and recorded the settlement agreement reached by the parties, as presented to me and as amended during the hearing, and I make the term(s) an Order of mine to be binding upon both parties.

In recognition of the settlement agreement, I provide the parties with the following orders:

- The landlords are provided an Order of Possession that is effective at 1:00 p.m. on January 31, 2021.
- The tenant is provided two conditional Monetary Orders that may be enforced only in the event the tenant complies with term 5. a. or 5. b. of the settlement agreement and the landlords fail to make the appropriate payment to the tenant:
 - A Monetary Order in the amount of \$2785.00 for term 5. a.
 - A Monetary Order in the amount of \$5585.00 for term 5 b.

Conclusion

The parties resolved this dispute by way of a settlement agreement that I have recorded in this decision. In keeping with the settlement agreement, I provide the landlords with an Order of Possession effective at 1:00 p.m. on January 31, 2021. I also provide the tenant with two conditional Monetary Orders that may only be enforced should the tenant comply with term 5. a. or term 5 b. and the landlords fail to make the applicable payment to the tenant.

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: October 15, 2020

Residential Tenancy Branch