



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her witness; and both landlords.

No issues were raised by either party in regard to the service of evidence.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on April 24, 2020 for a month-to-month tenancy beginning on May 1, 2020 for a monthly rent of \$1,400.00 due on the first of each month with a security deposit of \$700.00 paid.

The parties agree the tenant issued a notice to end tenancy to the landlord on January 22, 2021 indicating they would be vacating the rental unit on or before February 15, 2021. The tenants have provided an undated text message response from the landlord stating they "accept the notice for Feb. 15. 2021." The parties agreed the tenant moved out of the rental unit on February 13, 2021.

The tenant originally testified that she had documentary evidence that the landlord had agreed to return ½ month rent when she had provided them with her notice to end tenancy. She later confirmed the documentary evidence she had been referring to was

the text message submitted that read that the landlord's accept the notice for February 15, 2021.

She further testified that on the day of the move out inspection the male landlord; the tenant; and the tenant's stepmother had a conversation at the rental unit and before the inspection had begun. It was during this conversation that the tenant says the landlord promised to return ½ month rent for the remainder of the month of February.

The tenant's witness testified that the conversation was held in the kitchen with a number of other members of the tenant's family and friends around and that the male landlord confirmed to return ½ month rent as he had previously promised.

The landlords submitted that there was no such discussion about returning any amount of rent but rather they had agreed that if the tenant had left the rental unit clean and undamaged, they would be returning the deposit, but no other promises were made.

### Analysis

Section 45(1) of the *Act* allows a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

From the evidence of both parties, I find that if the tenant provided, on January 22, 2021, the notice of her intention to end the tenancy in February, the earliest it could be ended, pursuant to Section 45(1) would have be February 28, 2021. I make this finding, in part, based on the terms of the tenancy agreement that stipulates rent was due on the first of each month.

As such, the tenant could have moved out of the rental unit on any date after she had given notice, but she remained obligated to pay the rent, as per the *Act*, until the end of February 2021.

Having said that if the parties entered into a separate agreement regarding the payment of the last month's rent they could be bound by that agreement. There was no documentary evidence before me that the parties had entered into an agreement to return a portion of any amount of rent.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the tenant has failed to provide sufficient evidence to establish they had an agreement to return a portion of February 2021 rent.

On the tenant's assertion that she had the landlord's agreement on return of a portion of February rent, I favour the landlords' testimony. I make this finding because the tenant's version and her witness's version of the conversation paint very different pictures of the conversation. For example, the tenant testified that only the landlord; herself and her stepmother were around during the conversation at the start of the inspection, but her witness's testimony was that there were a number of other people around and that it occurred during the inspection.

I also note that the tenant had provided no testimony or evidence that the landlord had made the offer to return the rent prior to the inspection but her witness testified that the landlord had said that he was going to return the rent as he had previously told the tenant he was going to do. I find these inconsistencies lend to the tenant's position to be unreliable.

As a result, I find there was no agreement between the parties prior to or on the day the tenancy ended that the landlords would return any amount of rent to the tenant.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution, in its entirety, without leave to reapply.

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: November 01, 2021

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Residential Tenancy Branch