



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNETC, FFT  
                             MNRL-S, MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for compensation because the tenancy ended as a result of a two, four or 12 month Notice to End Tenancy, and the landlord has not complied with the *Act* or used the rental unit for the stated purpose; and
- to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for:

- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant.

Both parties attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenant explained that the landlord did not give a notice to end the tenancy, and an incorrect box on the tenant's application was

checked. After considering the discussions of the parties, I found that the entirety of the tenant's application is for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and the application for a monetary order for compensation because the tenancy ended as a result of a two, four or 12 month Notice to End Tenancy, and the landlord has not complied with the *Act* or used the rental unit for the stated purpose is dismissed.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of rent paid, moving expenses and damages for stress and hardship?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue and furniture and food?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The tenant** testified that the parties entered into a tenancy agreement for a fixed term to commence on August 1, 2022 and to revert to a month-to-month tenancy after August 1, 2023, however the tenant did not move in. A copy of the tenancy agreement has been provided as evidence for this hearing which was signed by the parties on June 10, 2022 and indicates rent in the amount of \$1,800.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$900.00. The tenant testified that the security deposit was refunded by the landlord by e-transfer on August 11, 2022. The rental unit is a suite in a house, and the other suite was occupied by the father of the landlord's children.

The tenant further testified that the parties had met 2 months prior to signing the tenancy agreement, and the tenant was assured a long term tenancy. In early June the tenancy agreement was signed and the tenant paid the first months rent and security

deposit. The parties continued to talk, and agreed that the tenant would move belongings in on July 24, 2022 and store them in a back bedroom because the tenant already arranged movers from the tenant's previous rental, and the tenant would personally move in on August 1, 2022. However, 2 weeks prior to the move-in date the landlord advised that the term would only be for 1 year and then the landlord's parents would be moving in.

The tenant agreed to look for another rental unit, but the tenant's previous landlord had given a 2 Month Notice to End Tenancy and would not extend the effective date. The tenant repeatedly told the landlord that the tenant would be exercising the tenant's right to move into the rental unit on August 1, 2022 unless the tenant found a suitable place to live, but did not.

On July 22, 2022 the tenant messaged the landlord about when to move belongings in and the landlord said the tenant could not move in. Due to the nature of the landlord's consistent changes to the tenancy agreement and Addendum, the tenant was concerned that the landlord was not trustworthy.

On July 31 the tenant messaged the landlord to confirm moving in. The landlord said that the tenant should stay where she was, using reasons such as dogs, kids, water being high in iron and a broken filtration system. The tenant asked the landlord to have a well test done because the landlord encouraged the tenant to not move in, and the tenant should stay where she was. The landlord's message on July 31 listed a whole bunch of reasons why the tenant shouldn't move in. The tenant asked for clarification but the landlord did not clarify or reply.

The tenant replied that she could not stay where she was and asked if the landlord was breaking the lease, however the landlord didn't reply until August 2 at 8:00 p.m. indicating that the landlord had been ill the day prior. The landlord's message also stated that she was not breaking the lease and expected the tenant to move in. The tenant told the landlord that she had a place to stay but only until October 1.

Nine changes had been made by the landlord to the original agreement, and by that point the tenant was couch-surfing with her 2 children.

The tenant has provided a Monetary Order Worksheet, but I was not able to open the file. The tenant claims \$6,800.00, equivalent to one month's rent paid to the landlord, plus \$5,000.00 for stress and hardship.

**The landlord** testified that she was convinced from the tenant's message that she was staying in her previous rental until October, and was not truthful to the landlord and got angry when the landlord advised that it would only be a 1 year lease.

The landlord stayed all day on August 1 but the tenant didn't arrive. The landlord lost money on Air BNB rentals. The tenant should have ended the tenancy. The landlord never said that the tenant couldn't move in, but the tenant said that the landlord had to do a well test first.

The landlord was looking forward to the tenant moving in, and lowered the rent, and didn't know if the landlord would be there. The landlord was trying to make it clear that there were issues and that the landlord couldn't commit to 1 year, and didn't want the tenant to be surprised.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$9,350.00:

- \$9,000 for not being able to re-rent until January, \$1,800.00 x 5 months; or
- \$9,000.00 lost air BNB revenue July 24 – 31 and August 1 – 31; cancelled summer booking;
- \$1,000.00 for bedroom furniture;
- \$1,000.00 for moving a treadmill outside;
- \$50.00 for changing locks;
- - \$1,800.00 received from the tenant for August rent; and
- \$100.00 for recovery of the filing fee.

The landlord has also provided numerous messages regarding bookings, with several hand-written notes written over them.

### Analysis

A tenancy agreement is a contract that requires both parties to comply with its terms.

In this case, both parties claim damage or loss as a result of the other party's failure to comply with the terms. In order to be successful, the parties are required to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;

3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material, and it is clear that numerous messages were exchanged between the parties. The document of most importance is the tenancy agreement, which states that the tenancy commences on August 1, 2022. There is no question that the tenant didn't arrive on August 1, 2022, and there is no evidence that the landlord refused to allow the tenant to move in on August 1, regardless of Face Book messages or emails. If the tenant had arrived on August 1 and the landlord refused entry, the tenant would have a strong case. The tenant testified that the tenant repeatedly told the landlord that the tenant would be exercising the tenant's right to move into the rental unit on August 1, 2022 unless the tenant found a suitable place to live. However, since the tenant did not arrive on August 1 and did not attempt to move into the rental unit, I find that the tenant has failed to mitigate any damage or loss suffered.

Since the tenant did not attempt to move into the rental unit on or after August 1, I find that the tenant is not entitled to recover the first month's rent from the landlord.

The tenant's application is dismissed.

With respect to the landlord's claim, I have reviewed the booking information, and note that some of the landlord's claim appears to be for a short term rentals with checkout dates of July 29, which is prior to the date the tenancy was to commence, and others are not dated. I don't see how that can be the responsibility of the tenant.

I accept that furniture and a treadmill were moved or given away by the landlord to make room for the tenant, but there is absolutely no evidence to justify the amounts claimed in the landlord's Monetary Order Worksheet. Nor is there any proof of changing locks for \$50.00 as per the tenant's request.

I am not satisfied that the landlord has established that any of the losses that the landlord may have suffered were a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and has failed to establish the amounts claimed.

I dismiss the landlord's application.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

The landlord's application is hereby dismissed 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: May 11, 2023

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Residential Tenancy Branch