



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the Tenant: OLC, MNDC, FF

For the Landlord: MNDS, MNR, MNDC, FF, OPR

### **Introduction**

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenant applied for an order to have the Landlord comply with the Residential Tenancy Act (the "Act"), for a monetary order and to recover the filing fee.

The Landlord applied for a monetary order for unpaid rent, for money or compensation for damage or loss, to keep all or part of the security deposit, an order of possession and to recover the filing fee.

The Landlord presented herself as being too sick to participate and asked that her son provide testimony. However, the Landlord came back and forth into the hearing, not able to speak. The Tenant appeared, and along with the Landlord's son, all gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

### **Issue(s) to be Decided**

Is the Tenant entitled to an order for monetary compensation, for an order for the Landlord to comply with the Residential Tenancy Act and to recover the filing fee?

Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to an order for monetary relief and for an order of possession?

### **Background and Evidence**

The parties agree that there is no written tenancy agreement and I heard testimony that this tenancy began on June 1, 2010, that the monthly rent was a total of \$1,580.00, with the Tenant paying \$790.00 per month and his brother paying the other \$790.00, and that the Tenant paid a security deposit of \$800.00. The Tenant submitted that the Landlords allowed each of the tenants to pay one half and collected the rent separately from each brother.

The Tenant stated that he understood there was a Notice to End Tenancy issued by the Landlord, but that he never had knowledge of the Notice until his brother moved out on May 15, 2011. The Tenant submitted documents indicating that he had paid his rent.

The Tenant submitted that the Landlord's father enters the rental unit without notice and that the father destroyed the Tenant's prayer bowl, estimated by the Tenant to be worth \$180.00. The Tenant further submitted that the Landlord keeps harassing members of his family.

The Landlord submitted no evidence, such as the Notice to End Tenancy, tenant ledger sheets or tenancy agreement.

The Landlord's son submitted that the Notice to End Tenancy was posted on the Tenant's door. There was no other information about the Notice submitted into evidence or testimony.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

### Tenant's Application:

The Tenant has submitted no evidence in support of his claim for a monetary order or proof that the Landlord's father broke his prayer bowl or the value. Therefore, I find the Tenant has failed to meet any of the steps required in proving damage or loss and I dismiss his claim for \$180.00.

The Tenant has submitted insufficient proof that the Landlord or her father has entered the rental unit without proper notice; I therefore dismiss his claim for an order for the Landlord to comply with the Act.

The Landlord, however, is advised of Section 28 of the *Act* which states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject

only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

The Landlord is cautioned that failure to comply with Section 28 of the *Act* could result in the Tenant's further addressing this issue through dispute resolution.

Landlord's Application:

The Landlord's Agent submitted that the Tenant was issued a 10 Day Notice to End Tenancy; however the Landlord has failed to prove that this Notice was ever issued, in accordance with section 46 of the *Act*, as the Landlord failed to provide documentary evidence in support of her application.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to end the tenancy due to this breach; however, the Landlord has the burden of proving that the Tenant was served with the 10 Day Notice to End Tenancy.

In the absence of documentary evidence that the 10 Day Notice to End Tenancy was issued, I find that the Landlord has failed to present the merits of her case and I hereby dismiss her application.

Conclusion

Due to insufficient evidence, the Tenant's Application is dismissed.

Due to insufficient evidence, the Landlord's Application is dismissed.

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: June 16, 2011.

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Residential Tenancy Branch