



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNR

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to obtain a monetary order for unpaid rent.

Both parties attended the hearing with the landlord represented by his daughter and the tenants attended with an interpreter.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary Order for unpaid rent, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began sometime between January and February of 2005 as a month to month tenancy and ended on October 10, 2009. The rent at the time the tenancy ended was \$550.00 per month due on the 1<sup>st</sup> of the month.

The parties disputed whether a security deposit of \$200.00 had been paid. The landlord testified that a security deposit was paid but that it was used, at the tenants' request, to go towards the first month's rent of the tenancy. The tenants state that a deposit was paid but that it was not used for a portion of the first month's rent.

The landlord testified the tenants were called by the landlord on October 1, 2009 at which point the tenants informed the landlord they would be moving out on October 10, 2009 and that they would only be paying rent for the amount of time they were staying in the rental unit.

The tenants testified that they had verbally informed the landlord they would be moving out by mid October on August 10, 2009. They further testified they did not follow up with a written notice.

The tenants testified they provided the landlord, on October 1, 2009 the name of a potential tenant. The landlord indicated that the potential tenant was rejected because he did not want to have a tenant referred by the outgoing tenants because there had been parking problems with these tenants.

The landlord also indicated that the rental unit had been rented out beginning on November 18, 2009 for \$200.00 for the partial month.

### Analysis

Section 45 of the *Act* allows a tenant to end a month to month tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, that rent is payable under the tenancy agreement.

The Act, in Section 52, also requires the notice given by the tenant must be in writing and must be dated and signed by the tenant, give the address of the rental unit and state the effective date.

As per the tenants' testimony, no written notice to end the tenancy was provided to the landlord, and as such the onus is on the tenant to prove that verbal notice may have been provided to the landlord prior to October 1, 2009. In light of the disputed testimony, I find the tenant has failed to prove verbal notice had been provided in August, 2009.

In the case of verbal notice, I find that where the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Even if written notice to end the tenancy had been provided to the landlord the tenancy would have ended on October 31, 2009, not on October 10, 2009 and the tenant would have remained responsible to pay rent for the month of October, 2009. As the tenant has failed to provide evidence supporting their claim that verbal notice had been provided prior to October 1, 2009 I also find the tenant is responsible for November 2009 rent.

The Residential Tenancy Policy Guidelines state that when a person who makes a claim for damages has a responsibility to mitigate their losses. As the landlord was able to rent the rental unit by mid November, I am satisfied the landlord made reasonable attempts at mitigation.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$900.00** comprised of \$1,100.00 rent owed less \$200.00 received by the landlord from the new tenant.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 04, 2010.

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Dispute Resolution Officer