



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNR, MNSD, O, FF

### Introduction

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

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for lost rental revenue; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties provided evidence that they had been negotiating to a month to month tenancy beginning on November 1, 2012 for a monthly rent of \$1,200.00 with a security deposit of \$600.00 paid. While a tenancy agreement was written up and signed by the landlord, the tenants did not sign the tenancy agreement.

The tenants submit that they did not believe they had entered into a tenancy agreement as there was an outstanding issue related to the storage of propane in the residential property.

The landlord submits that the parties had agreed to a tenancy and that the agreement was contingent on renovations made to the rental unit that the tenants sought. The tenants acknowledged the landlord had discussed renovations with them but that the discussions were initiated by the landlord and they had no renovation requirements as a condition to entering into a tenancy agreement.

The tenants provided the landlord with an email dated September 19, 2012 indicating that they had decided they no longer were interested in starting the tenancy and asked for the return of their security deposit.

The landlord submits that she agreed to a "significant updating of the suite" that included major renovations to the unit. The landlord acknowledges the tenants

informed her of their intent to not move in to the rental unit and that as a result of the condition of the rental unit (under renovation) the unit was not “showable to other prospective tenants until renovations are complete.”

The tenants testified that they saw the landlord advertise the availability of the rental unit only with a student association registry from a local university but nowhere else. The landlord testified that she used the housing registry and advertised on Craigslist and showed the unit to two potential tenants who did not take the unit.

The landlord seeks compensation in the amount of rent for the month of November 2012 and to retain the security deposit. The tenants submit that they had never asked for any updates and that they were initiated by the landlord. The tenants also submit that the landlord did not attempt to re-rent the unit for the entire period of time between September 19 and November 1, 2012.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

From the testimony I find that by the provision of a security deposit on September 12, 2012 and verbal agreement for most of the terms of the tenancy the parties did enter into a verbal tenancy agreement for a month to month tenancy beginning on November 1, 2012 with rent due on the 1<sup>st</sup> of each month. As such, pursuant to Section 16, the rights and obligations of both parties took effect on September 12, 2012.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the 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.

As such, if the tenants choose to end the tenancy they were required to give notice to end the tenancy in accordance with Section 45. I accept that the tenants provided their notice on September 19, 2012 and that the landlord received it on the same date and

therefore the tenants notice became effective October 31, 2012 as allowed under the *Act*.

As to the landlord's claim that she undertook renovations to the rental unit as a condition of the tenant's acceptance of the tenancy, I find the landlord has provided no evidence to support this position. For example, the tenant's dispute they requested any renovations of the landlord and there is no documentation provided by either party stipulating any conditions agreed to as a condition to be fulfilled prior to the start of the tenancy.

### Conclusion

For the reasons above, I find the landlord has failed to establish she has suffered a loss as a result of a violation of the *Act*, regulation or tenancy agreement and I dismiss her Application in its entirety.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order to the tenants in the amount of **\$600.00** comprised of the security deposit held by the landlord.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: December 20, 2012.

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Residential Tenancy Branch