



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are undisputed facts: The Parties signed a tenancy agreement that provides for a fixed term tenancy starting on October 1, 2011 and ending on September 30, 2012. The Parties initialled the provision that at the end of the term the tenant must move out of the unit. The Parties did not select the option that the tenancy would continue for another fixed length of time or continue on a month to month.

The Tenant states that at the time of signing the tenancy agreement, the Landlord told the Tenants that if they wished to remain past the end term, the Landlord may extend

the tenancy. The Tenant also states that the Tenant relied on the Landlord's promise to extend the term and would not have otherwise signed the tenancy agreement.

The Tenant states that when the Landlord gave them a reminder of the end date, the Tenants informed the Landlord that they would stay in the unit longer. The Tenant states that the Landlord refused to offer a new agreement and told the Tenant that the Landlord would be moving into the unit. The Tenant states that the Landlord did not move into the unit and advertised the unit for rent with a \$400.00 increase in the rent payments. The Tenant states that as a result of the Landlord not providing the Tenants with an extension or another tenancy agreement, the Tenants incurred costs to move and had to pay extra rent for the overlap in their subsequent tenancy. The quantum of the Tenant's monetary claim is \$1,229.00.

The Landlord's legal counsel ("Counsel") states that the Landlord denies making a promise to renew the tenancy and argues that the Tenant's evidence of an oral agreement, collateral or otherwise, is vague and unsupported and cannot apply to modify or change the tenancy agreement. Counsel argues that at best, the Tenants evidence only supports a discussion. Counsel states that the Landlord provided the Tenant with nearly two months notice that the tenancy would end as indicated on the agreement and that the Tenant had to move out of the unit anyway. For these reasons, Counsel argues that the Landlord is not responsible for the Tenants costs for the move and the overlap in rent costs. Counsel also argues that the losses being claimed by the Tenant are too remote and that the Tenant failed to provide evidence of any mitigation of those losses.

Both Parties provided copies of email correspondence in relation to the end of the tenancy.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party

claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Upon reading a reading of the tenancy agreement, I find that the agreement is clear and unambiguous on the requirement that the Tenants must vacate the unit at the end of the fixed term. This requirement is also specifically initialled by the Tenant indicating that the Tenant was fully aware of this requirement. The Tenant's evidence of an oral agreement that directly contradicts this term is vague and unsupported by any additional evidence. Further, the email correspondence does not indicate reliance or insistence on such a promise but rather tends to show the Tenants making appeals to the Landlord to reconsider this end term. As a result, I find on a balance of probabilities that the Tenant has failed to substantiate that the Landlord was required to renew or extend the tenancy and I therefore dismiss the Tenant's application.

### Conclusion

The Tenant'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: February 26, 2013

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Residential Tenancy Branch

