



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

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

The hearing was conducted via teleconference and was attended by the landlord and an agent for the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on September 1, 2001 for a month to month tenancy beginning on September 1, 2001 for a monthly rent of \$560.00 due on the 1<sup>st</sup> of each month with a security deposit of \$280.00 paid.

The landlord submitted into evidence the following documents:

- A copy of a tenant's notice dated June 30, 2014 of his intent to end the tenancy on July 31, 2014; and
- A copy of a tenant's note dated July 7, 2014 stating that the tenant will not be moving out in the "near future".

The landlord submits that she is uncertain as to when the tenant moved out of the rental unit. The landlord submits that she was away from the residential property from between the 20<sup>th</sup> or 21<sup>st</sup> of July until the 24<sup>th</sup> or 26<sup>th</sup> of July 2014. The landlord submits that because the tenant provided the note on July 7, 2014 the landlord could not re-rent the unit for the month of August 2014 as she believed the tenant was not moving out.

The tenant's agent testified that the tenant had originally given his notice on June 30, 2014 but was later convinced by some friends that he shouldn't move out and then gave the July 7, 2014 note to the landlord. However, the tenant's agent stated the tenant did vacate the rental unit on July 13, 2014.

The landlord testified that despite living in the residential property herself she did not notice that the tenant moved out on July 13, 2014 and that she was not aware that the tenant had moved out until after she returned from being away on the 24<sup>th</sup> or 26<sup>th</sup>.

### 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 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
  - i. Section 45 (tenant's notice);
  - ii. Section 46 (landlord's notice: non-payment of rent);
  - iii. Section 47 (landlord's notice: cause);
  - iv. Section 48 (landlord's notice: end of employment);
  - v. Section 49 (landlord's notice: landlord's use of property);
  - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
  - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Section 45 states a tenant may end a periodic 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.

Residential Tenancy Policy Guideline 11 states that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. As the landlord provided no evidence or

testimony to confirm that she had provided consent to the tenant to continue the tenancy I find the tenant's notice to end the tenancy remained effective.

Further, I find it unlikely that a landlord would not notice a tenant moving out of the residential property in the middle of the month. While I accept that the landlord was away from the property after the 20<sup>th</sup> of July 2014 for a period of a few days I find that she was there on the date that the tenant vacated the rental unit.

In addition, the landlord provided no evidence that she had attempted to re-rent the unit after she received the tenant's initial notice to end tenancy on June 30, 2014.

As a result, I find the landlord failed to sufficiently take steps to either ensure that both parties understood the tenancy might continue or take any steps to mitigate her losses if it was to end on July 31, 2014. As such, I find the landlord has failed to provide evidence to substantiate the tenant breached the *Act*, regulation or tenancy agreement

### Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety..

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 18, 2015

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Residential Tenancy Branch

