



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an assistant who did not testify or take part in the proceedings. However, despite being served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on July 23, 2015, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the tenant. The tenant testified that the landlord was served on that date and in that manner and has provided a copy of the registered mail envelope containing a tracking number assigned by Canada Post addressed to the landlord, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and more particularly for recovery of rent paid?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on May 15, 2015 and ended on June 14, 2015. Rent in the amount of \$1,095.00 per month was payable on the 15<sup>th</sup> day of each month. A tenancy agreement was signed by the parties but the

tenant didn't receive a copy. No security deposit or pet damage deposit were collected by the landlord.

The tenant further testified that rent was paid on May 15, 2015 but the tenant couldn't move in until the 28<sup>th</sup> of May because the rental unit wasn't ready for occupation by the tenant. Then after moving in, the tenant discovered several issues and testified that everything the tenant touched fell out. The tenant plugged in a shaver and the electrical plate fell off, the tenant couldn't open the fridge, and there was only one entrance but the tenant couldn't get the locks open.

On June 8, 2015 the tenant told the landlord that she was moving and the following day paid the landlord \$1,155.00 for rent and for an agreed amount for carpet cleaning.

The landlord wanted to show the suite to another tenant on June 13, 2015 and the landlord re-rented the rental unit prior to July 1. The tenant went to pick up her mail and saw furniture through the window of the rental unit. The tenant told the landlord that rent couldn't be collected twice for the same time period and the landlord responded that she did not want to leave the unit vacant.

The tenant claims half a month's rent for July 1 to 15, 2015 as well as the portion of rent paid for May 15 to 28, 2015 because the tenant had to continue to pay rent elsewhere as a result of the rental unit not being ready to rent until May 28, 2015.

### Analysis

The *Residential Tenancy Act* states that a tenancy exists as a result of a landlord collecting rent in exchange for providing a tenant with living accommodation even if it is not put into writing. In this case, the tenant testified that she signed a tenancy agreement but didn't get a copy from the landlord. Where a landlord makes a claim against a tenant, the onus is on the landlord to establish a tenancy, however a claim by a tenant does not have as high a standard to prove. If a landlord fails to give a tenant a copy of a tenancy agreement, the tenant has little evidence to establish that a tenancy was created. I accept the undisputed testimony of the tenant that the parties entered in to an agreement for a tenancy to commence on May 15, 2015 but the tenant could not move in and had to pay rent elsewhere until May 28, 2015, and the tenant has established a claim in the amount of \$671.13 ( $\$1,095 / 31 \times 19$  days).

The *Residential Tenancy Act* also specifies how a tenancy ends, and I am not convinced that the tenant gave the required notice to end the tenancy, however I accept the undisputed testimony of the tenant that the rental unit was re-rented for July 1, 2015 and the landlord has not lost any rental revenue as a result. I am further satisfied that

the tenant paid rent on June 9, 2015 for the period of June 15 to July 15, 2015, and the landlord has collected double rent for half a month, and the tenant is entitled to reimbursement of rent paid for that period, or \$547.50.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,268.63.

This order is final and binding and may be enforced.

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: September 30, 2015

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Residential Tenancy Branch

